

**OVERSIGHT OF THE 2000 CENSUS: EXAMINING
THE BUREAU'S POLICY TO COUNT PRISONERS,
MILITARY PERSONNEL, AND AMERICANS
RESIDING OVERSEAS**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CENSUS
OF THE
COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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**OVERSIGHT OF THE 2000 CENSUS:
EXAMINING THE BUREAU'S POLICY TO
COUNT PRISONERS, MILITARY PERSONNEL,
AND AMERICANS RESIDING OVERSEAS**

WEDNESDAY, JUNE 9, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CENSUS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2247, Rayburn House Office Building, Hon. Dan Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller, Gilman, Ryan, Maloney, and Davis of Illinois.

Staff present: Tom Hofeller, staff director; Erin Yeatman, press secretary; Jo Powers, assistant press secretary; Kelly Duquin and Timothy Maney, professional staff members; Michelle Ash, minority counsel; David McMillen and Mark Stephenson, minority professional staff members; and Ellen Rayner, minority chief clerk.

Mr. MILLER. Good morning. With a quorum present, we will begin the hearing of the subcommittee. I will have a brief opening statement, and I believe Congresswoman Maloney will have one, and then we will proceed.

As we begin this hearing today, let me be clear that everyone gathered here shares the same goal. We all want the most accurate census in 2000. As part of our effort toward achieving an accurate count, we are here this morning to discuss three pieces of recently introduced census legislation that focus on the enumeration of overseas Americans, prisoners, and military personnel.

We are honored to have Chairman Ben Gilman, as well as Congressman Mark Green and fellow subcommittee member, Paul Ryan, here to discuss their proposed legislation. I am also pleased to welcome back Census Director Prewitt as a witness to discuss Census Bureau policy in enumerating these groups and any concerns that he may have with these proposals. I also look forward to hearing from some very informed witnesses regarding these proposals. I understand that some of these witnesses have traveled great distances to be here today, and we do appreciate their efforts that they have made to be here.

Chairman Ben Gilman has just introduced today a resolution that will affect the 3 million Americans who live and work abroad. At present, the Census Bureau does not plan to enumerate these citizens. This resolution raises concerns that, while the U.S. Gov-

ernment officials living abroad were counted in 1990 and will be counted in 2000, private citizens who play a key role in advancing our national interests around the world are not included in the census count.

Through the Census 2000 Coalition, Americans living abroad have taken the initiative to have themselves included in the census count. Many of these Americans maintain ties to the United States by voting and paying taxes and feel they should be included in the census count. I look forward to discussing current Bureau policy regarding this issue and examining the viability of this question.

Another piece of legislation we will discuss is H.R. 1632, which was recently introduced by my colleague from Wisconsin, Mark Green. This particular piece of legislation seeks to affect how prisoners will be enumerated in the 2000 census. At present, many States have export policies with regard to prisoners, meaning many prisoners are incarcerated in States other than where they were convicted.

For purposes of the 2000 census, the Census Bureau will attribute counts of prisoners to the States in which they are incarcerated. H.R. 1632 seeks to attribute the counts of the prisoners to their home State or the State in which they were convicted, provided that State can claim more than half the costs associated with the incarceration of the prisoners.

I know this is of particular interest to my colleagues, Mr. Green and Mr. Ryan, as it is believed that the State of Wisconsin could add as many as 10,000 people to their apportionment count with this method. I will look forward to hearing about this proposal as well as Dr. Prewitt's views on this matter.

[The prepared statement of Hon. Dan Miller follows:]

SUBCOMMITTEE ON THE CENSUS

The Honorable Dan Miller, Chairman

H1-114 O'Neill House Office Building, Washington, D.C. 20515

FOR IMMEDIATE RELEASE

Contact: Erin Yeatman 226-1973

June 9, 1999

STATEMENT OF CHAIRMAN DAN MILLER

JUNE 9, 1999

"Oversight of the 2000 Census: Examining the Bureau's Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas."

As we begin this hearing today, let me be clear that everyone gathered here shares the same goal-- we all want the most accurate census in 2000. As part of our effort towards achieving an accurate count we are here this morning to discuss three pieces of recently introduced census legislation that focus on the enumeration of overseas Americans, prisoners and military personnel. We are honored to have Chairman Ben Gilman as well as Congressman Mark Green and fellow subcommittee Member Paul Ryan here to discuss their proposed legislation.

I am pleased to welcome back Census Bureau Director Prewitt as a witness to discuss Census Bureau policy in enumerating these groups and any concerns he may have with these proposals. I also look forward to hearing from some very informed witnesses regarding these proposals. I understand these witnesses have traveled great distances to be here today and we do appreciate the efforts they have made at their own expense.

Chairman Ben Gilman has just today introduced a resolution that will affect the estimated three million Americans who live and work abroad. At present, the Census Bureau does not plan to enumerate these citizens. This resolution raises concerns that while U.S. Government officials living abroad were counted in 1990 and will be counted in 2000, private citizens, who play a key role in advancing our national interests around the world are not included in the census count. Through the Census 2000 Coalition, Americans living abroad have taken the initiative to have themselves included in the census count.

Many of these Americans maintain ties to the United States by voting and paying taxes, and feel they should be included in the census count. I look forward to discussing current Bureau policy regarding this issue and examining the viability of this question.

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to affect how prisoners will be enumerated in the 2000 Census. At present, many states have export policies with regard to prisoners, meaning many prisoners are incarcerated in states other than where they were convicted.

For purposes of the 2000 Census, the Census Bureau will attribute counts of prisoners to the states in which prisoners are incarcerated. H.R. 1632 seeks to attribute the counts of prisoners to their "home state" or the state in which they were convicted, provided that state can claim more than half the costs associated with the incarceration of the prisoner. I know this is of particular interest to my colleagues Mr. Green and Mr. Ryan as it is believed the state of Wisconsin could add as many as 10,000 people to their apportionment count with this method. I look forward to hearing about this proposal as well as Dr. Prewitt's views on this matter.

And last but certainly not least, my fellow subcommittee Member Paul Ryan has drafted legislation which will require the Census Bureau to attribute the counts of individuals who serve in the Armed Forces to their "home of record". At present, the Bureau will attribute these individuals to the state in which they are stationed on April 1, 2000.

Again, I believe all of these proposals address legitimate concerns and I look forward to an open and informed discussion today. We have several informed witnesses with us here today as well as Census Bureau Director Prewitt who I am sure will be able to advise us on the viability of these proposals.

Mr. MILLER. And last but certainly not least, my fellow subcommittee member, Paul Ryan, has drafted legislation which will require the Census Bureau to attribute the counts of individuals who serve in the Armed Forces to their homes of record. At present, the Bureau will attribute these individuals to the State in which they are stationed on April 1, 2000.

Again, I believe all of these proposals address legitimate concerns and I look forward to an open and informed discussion today. We have several informed witnesses with us today, as well as Census Bureau Director Prewitt who, I am sure, will be able to advise us on the viability of these proposals.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

And thank you for calling this meeting and for all of the witnesses, many of whom came from abroad to be here.

Today, we will consider three related issues, all of which deal with how and where to count certain populations during the census. As Director Prewitt has pointed out, the census is not just about counting people. The census must count all of the people and match them to specific addresses as of April 1.

As the census has evolved over the past two centuries, the rules governing where people are counted have evolved to meet the changing character of society. It is quite proper for Congress, which is constitutionally charged with conducting the census, to consider who should be counted in the census and where they should be counted. However, if we are going to examine residency rules for the census, we would be better served if we pursued it in a more systematic fashion and in a timeframe that allowed for the proper consideration of these ideas.

We are 298 days from census day. Any change we make today increases the risk of a failed or less accurate census.

Let me say at this point, Mr. Chairman, that I am pleased that you called this hearing today. There are a number of issues on which this subcommittee should be holding hearings, and I hope that you will see to it that they are addressed. Results from the dress rehearsal have been in for some time, and we have yet to hold a hearing on them. This hearing clearly shows the need for a hearing on residency rules and how they are applied.

In addition, Mr. Chairman, I ask that you call a hearing on how the census is progressing toward meeting the milestones for the 2000 census. I believe we should give the Census Bureau Director an opportunity to keep the Congress informed as we count down to census day. Perhaps we could ask the Director to provide us with an electronic census clock that counts down the days to April 1, 2000.

Turning again to the issues of the day, the first resolution, introduced by the distinguished chairman of the International Relations Committee, Ben Gilman, from the great State of New York I might add, is a sense of the congressional resolution which advocates that all Americans living overseas be provided with the opportunity to be counted in the 2000 census. Let me say, on the outset, that I am sympathetic to the desires of overseas Americans to be counted. It is a laudable patriotic motive which we should do all we can to support and accommodate.

However, the proposal raises a number of complicated questions which I hope our witnesses and the Director can address today. The counting of overseas Americans can only be done on a voluntary basis of self-enumeration, much as the mailout, mailback portion of the decennial census is done. What cannot be done is any equivalent of the nonresponse followup the Census Bureau conducts in this country. As a result, the accuracy of the count of Americans overseas is questionable. In fact, without a more precise definition of who we are trying to count, a census or a complete count of this population is impossible.

A second question is whether overseas Americans should be allocated to States for purposes of apportionment and, if so, to which State should they be assigned? Last residence? Legal residence? Leave it completely voluntary, which means they would only go to nontax States like yours. Some have suggested using voter registration; however, it is my understanding that the majority of Americans overseas do not vote.

Finally, the voluntary nature of such a count, coupled with the vagueness of where these people should be counted, establishes a dangerous situation. As we will see in discussing the other proposals on the table today, the temptation to try to gain a few more people is tremendous. We could be unintentionally setting the stage for States to try to influence the count of Americans overseas in order to add to their numbers.

It is in order, however, to answer the most important question: How many Americans are living overseas? I am drafting legislation which would require a special census of the overseas population as soon after the census as is practicable. That information can be used by the Census Bureau to more precisely define this population, and, in turn, will allow Congress to consider the inclusion of this population in the 2010 census. Without in any way criticizing the professionalism of the Census Bureau, I believe that such a survey would be much better in quality than anything the Bureau could improvise now at this late date in an ad hoc manner. I will be providing each of the witnesses with a discussion copy of that legislation. I would hope that, after careful consideration of the draft, you would contact me with your reactions to the bill.

Mr. Chairman, I hope this is one thing we can agree on. And I hope it will be a bill that we can work together on to solve part of the solution to this problem.

Today, we will also consider two other bills. H.R. 1632, introduced by Representative Green, requires that prisoners housed out of State be counted as residents of the State paying for their incarceration. A bill proposed by subcommittee member, Representative Ryan, requires that active duty military personnel and their dependents be counted at their home of record. These bills were presumably introduced with the intent of boosting the population totals of Wisconsin, which may lose a seat after the 2000 reapportionment.

I certainly understand the motives of these bills. New York is slated to lose two seats if the current projections hold true. But, these bills also raise troubling questions and would overturn precedent about where people are counted that date back to the very first census. What is more, these bills apparently would not have

their desired effect. An analysis of the proposal on the military done for me by the Congressional Research Service shows that assigning military personnel to their "home of record" would not shift any seats in the House. And even if all of the prisoners housed out of State were counted in Wisconsin, I doubt it would be enough to affect its apportionment.

And then, if you start with prisoners, then to use my own State, we not only have prisoners out of State, we have prisoners moved from one section of the State to another section that is densely populated. Then, would you shift the count there? Just to use my own State, we also have foster care children that we pay for in other States, college students, I am sure there are many other government programs. So, it would start a whole host of other problems, or rather challenges, to get an accurate count.

Mr. Chairman, I would like to have the apportionment tables created by the Congressional Research Service included in the record and, also, my draft legislation.

[The information referred to follows:]

Table 1. Population and Apportionment Impacts of Reallocating Military Personnel Among the 50 States Based on *Home of Record*^a

	Military population		Estimated population			Apportionment estimate for 1998	
	Distribution by state 7/98	1990 percentage allocation of overseas pop. by state (based on home of record, HOR)	Official Census Bureau estimate (7/1/98)	Estimate altered by reallocating domestic military by 1990 HOR	Difference	By Census pop. est..	After military adjustment
AL	16,222	2.39%	4,351,999	4,365,209	13,210	7	7
AK	17,691	0.21%	614,010	598,864	-15,146	1	1
AZ	26,919	1.39%	4,668,631	4,658,762	-9,869	8	8
AR	4,854	1.25%	2,538,303	2,548,838	10,535	4	4
CA	199,932	8.61%	32,666,550	32,572,512	-94,038	53	53
CO	25,482	1.47%	3,970,971	3,963,557	-7,414	6	6
CT	8,346	0.93%	3,274,069	3,277,155	3,086	5	5
DE	3,902	0.27%	743,603	743,080	-523	1	1
FL	55,771	7.11%	14,915,980	14,947,668	31,688	24	24
GA	66,905	3.28%	7,642,207	7,615,670	-26,537	12	12
HI	47,242	0.77%	1,193,001	1,155,175	-37,826	2	2
ID	3,536	0.57%	1,228,684	1,232,148	3,464	2	2
IL	19,212	3.92%	12,045,326	12,074,337	29,011	20	20
IN	902	2.18%	5,899,195	5,925,116	25,921	10	10
IA	6	1.16%	2,862,447	2,876,701	14,254	5	5
KS	21,110	0.87%	2,629,067	2,618,684	-10,383	4	4
KY	36,393	1.49%	3,936,499	3,918,381	-18,118	6	6
LA	18,527	1.98%	4,368,967	4,374,823	5,856	7	7
ME	3,315	0.58%	1,244,250	1,248,012	3,762	2	2
MD	35,195	1.86%	5,134,808	5,122,540	-12,268	8	8
MA	3,367	1.37%	6,147,132	6,160,640	13,508	10	10
MI	614	3.64%	9,817,242	9,861,385	44,143	16	16
MN	18	1.30%	4,725,419	4,741,346	15,927	8	8
MS	14,415	1.44%	2,752,092	2,755,356	3,264	4	4
MO	14,841	2.25%	5,438,559	5,451,426	12,867	9	9
MT	4,007	0.50%	880,453	882,581	2,128	2	2
NE	8,702	0.68%	1,662,719	1,662,346	-373	3	3
NV	8,256	0.47%	1,746,898	1,744,415	-2,483	3	3
NH	496	0.51%	1,185,048	1,190,784	5,736	2	2
NJ	10,814	2.01%	8,115,011	8,128,851	13,840	13	13
NM	14,598	0.73%	1,736,931	1,731,301	-5,630	3	3
NY	17,609	5.88%	18,175,301	18,229,933	54,632	29	29
NC	103,232	3.15%	7,546,493	7,482,012	-64,481	12	12
ND	9,845	0.28%	638,244	631,826	-6,418	1	1
OH	6,687	4.37%	11,209,493	11,256,549	47,056	18	18

Table 1. Population and Apportionment Impacts of Reallocating Military Personnel Among the 50 States Based on *Home of Record*¹

	Military population		Estimated population			Apportionment estimate for 1998	
	Distribution by state 7/98	1990 percentage allocation of overseas pop. by state (based on home of record, HOR)	Official Census Bureau estimate (7/1/98)	Estimate altered by reallocating domestic military by 1990 HOR	Difference	By Census pop. est..	After military adjustment
OK	28,927	1.31%	3,346,713	3,333,850	-12,863	5	5
OR	6,799	1.24%	3,281,974	3,290,428	8,454	5	5
PA	6,799	4.68%	12,001,451	12,052,214	50,763	19	19
RI	2,296	0.27%	988,480	989,552	1,072	2	2
SC	54,963	2.07%	3,835,962	3,806,399	-29,563	6	6
SD	3,721	0.43%	738,171	739,790	1,619	1	1
TN	7,080	2.12%	5,430,621	5,449,545	18,924	9	9
TX	103,633	7.97%	19,759,614	19,753,944	-5,670	32	32
UT	4,775	0.54%	2,099,758	2,101,578	1,820	3	3
VT	0	0.24%	590,883	593,831	2,948	1	1
VA	134,214	3.18%	6,791,345	6,696,172	-95,173	11	11
WA	46,061	2.31%	5,689,263	5,671,603	-17,660	9	9
WV	1	0.89%	1,811,156	1,822,045	10,889	3	3
WI	614	1.63%	5,223,500	5,242,902	19,402	8	8
WY	514	0.26%	480,907	483,583	2,676	1	1

¹The estimate of the impact of "reallocating" military personnel stationed in the 50 states back to their "Homes of Record" rather where they are stationed was done by computing each State's share of the Defense Department's 7/98 total of 1,229,360 military personnel stationed in the 50 States, and then subtracting those amounts the DOD's state totals. The results of this calculation are then added to each state's 1998 Census Bureau population estimate to form the basis of an apportionment calculation. A Home of Record is the place recorded as the home of the individual when commissioned, appointed, enlisted, inducted, or ordered into the relevant tour of active duty. The place recorded as the home of the individual when reinstated, reappointed, or reenlisted remains the same as that recorded when commissioned, appointed, enlisted or inducted or ordered into the relevant tour of active duty unless a break in service exceeds one full day, can the Home of Record be changed by the Member. The Air Force no longer uses the Home of Record.

Table 2. Population Needed to Gain or Lose the Last House Seat (No. 435)

Priority	Based on 1998 population estimates				After reallocating domestic military			
	ST	Seats	Priority value	Pop. needed to gain/lose seat	ST	Seats	Priority value	Pop. needed to gain/lose seat
420	CA	51	646,894.06	-1,549,955	OH	18	643,494.04	-441,320
421	MO	9	640,940.04	-209,924	IA	5	643,249.80	-111,734
422	OH	18	640,804.03	-430,388	MO	9	642,456.43	-205,268
423	IA	5	640,062.51	-106,715	TN	9	642,234.75	-203,383
424	TN	9	640,004.54	-201,986	NY	29	639,745.18	-612,077
425	NY	29	637,827.97	-616,292	VA	11	638,454.63	-211,746
426	FL	24	634,866.22	-438,549	MI	16	636,549.29	-283,252
427	CA	52	634,331.76	-933,723	FL	24	636,214.95	-421,717
428	MI	16	633,699.87	-271,102	MN	8	633,588.78	-114,670
429	MN	8	631,460.45	-114,197	CA	52	632,505.69	-733,336
430	TX	32	627,368.35	-351,746	TX	32	627,188.33	-281,034
431	AZ	8	623,871.83	-57,409	IN	10	624,561.76	-59,733
432	MT	2	622,574.27	-9,014	MT	2	624,078.99	-8,223
433	CA	53	622,248.19	-317,496	AZ	8	622,553.03	-32,086
434	IN	10	621,829.45	-53,403	CA	53	620,456.91	-115,044
435	IL	20	617,912.17	-33,369	IL	20	619,400.40	-22,124
<i>Last seat provided by law</i>								
436	NY	30	616,200.39	50,491	PA	20	618,265.51	22,122
437	PA	20	615,661.43	43,875	NY	30	618,052.59	39,754
438	WI	9	615,595.10	19,661	WI	9	617,881.65	12,886
439	MS	5	615,386.38	11,296	MS	5	616,116.24	14,686
440	CO	7	612,733.97	33,559	CO	7	611,589.97	50,616
441	GA	13	611,866.10	75,515	FL	25	610,235.95	224,481
442	OK	6	611,023.29	37,732	GA	13	609,741.44	120,639
443	CA	54	610,616.35	390,309	CA	54	608,858.55	563,963
444	FL	25	608,942.30	219,716	OH	19	608,684.45	198,172
445	TX	33	608,060.07	320,155	OK	6	608,674.83	58,745
446	KY	7	607,414.83	68,031	TX	33	607,885.59	374,186
447	UT	4	606,147.91	40,753	UT	4	606,673.30	44,087
448	OH	19	606,139.95	217,707	KY	7	604,619.16	95,792
449	MD	9	605,142.66	108,353	MD	9	603,696.86	133,248
450	NC	13	604,202.85	171,229	NJ	14	602,550.04	227,323

Each state's claim to representation in the House is based on a "priority value" determined by the following formula: $PV = P / [n(n-1)]^n$; where PV = the state's priority value, P = the state's population, and n = the state's nth seat in the House. For example, the priority value of Wisconsin's 9th seat (based on the unmodified 1998 population estimate) is:

$$\begin{aligned}
 PV_{9th} &= 5,223,500 / [9(9-1)]^9 \\
 &= 5,223,500 / [72]^9 \\
 &= 5,223,500 / 8.485281374238570 \\
 &= 615,595.10
 \end{aligned}$$

The actual seat assignments are made by ranking all of the states' priority values from highest to lowest until 435 seats are allocated.

[DISCUSSION DRAFT]

106TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. MALONEY of New York introduced the following bill; which was referred
to the Committee on _____

A BILL

To provide for an interim census of Americans abroad, the
data from which shall be used in deciding whether or
not to count such individuals in future censuses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Census of Americans
5 Abroad Act".

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of the Congress that—

1 (1) between 3,000,000 and 6,000,000 Ameri-
2 cans live and work overseas while continuing to vote
3 and pay taxes in the United States;

4 (2) Americans living abroad help increase ex-
5 ports of American goods because they traditionally
6 buy American, sell American, and create business
7 opportunities for American companies and workers,
8 thereby strengthening the United States economy,
9 creating jobs in the United States, and extending
10 United States influence around the globe;

11 (3) Americans abroad play a key role in advanc-
12 ing this Nation's interests by serving as economic,
13 political, and cultural "ambassadors" of the United
14 States; and

15 (4) the major organizations representing Ameri-
16 cans and companies of the United States abroad
17 support the counting of all Americans abroad by the
18 Bureau of the Census.

19 **SEC. 3. COUNTING OF AMERICANS ABROAD.**

20 (a) **IN GENERAL.**—The Secretary of Commerce
21 shall—

22 (1) using any authorities available to the Sec-
23 retary under section 182 or any other provision of
24 title 13, United States Code, take a census of Amer-
25 icans abroad as of April 1, 2003;

1 (2) submit the final tabulations under this sub-
2 section to the President and the Congress within 9
3 months after the date specified in paragraph (1);
4 and

5 (3) not later than December 31, 2005, submit
6 to the President and the Congress a report
7 containing—

8 (A) the Secretary's findings as to the fea-
9 sibility of counting Americans abroad in future
10 decennial censuses of population; and

11 (B) any recommendations which the Sec-
12 retary may have regarding the counting of
13 Americans abroad.

14 (b) INTERIM REPORT.—Not later than June 30,
15 2002, the Secretary of Commerce shall submit to the com-
16 mittees of Congress having legislative jurisdiction over the
17 census a report which shall include—

18 (1) a summary of how the plans and prepara-
19 tions for carrying out this section are proceeding;

20 (2) a brief description or outline of how the tab-
21 ulations referred to in subsection (a) are to be car-
22 ried out; and

23 (3) information identifying any experts, consult-
24 ants, interest groups, or other persons outside the

14

4

1 Bureau of the Census who were consulted under this
2 section.

Mrs. MALONEY. The Census Bureau uses the concept of "usual residence" to decide where to count individuals, a principle established by the First Census Act in 1790 and upheld by the courts as recently as 1992. Usual residence is defined as the place where a person lives and sleeps most of the time. Mandating exceptions to this rule must be done very carefully, if at all, because it raises serious questions.

As I said before, I would welcome a thorough congressional study on the use of usual residence in the census. In fact, I believe that such a study would benefit both Congress and the Census Bureau. We could begin by examining the exception to that rule provided for Members of the House and Senate. However, we start down a treacherous path when we encourage changes in census procedures without a thorough understanding of both the intended and unintended consequences.

Again, I thank you for calling this hearing.

Mr. MILLER. Thank you.

Without objection, your requested document for the record will be included.

[The prepared statement of Hon. Carolyn B. Maloney follows:]



Congresswoman

14th District • New York

Carolyn Maloney

Reports

2430 Rayburn Building • Washington, DC 20515 • 202-225-7944
1651 Third Avenue • Suite 311 • New York, NY 10128 • 212-860-0606

STATEMENT OF THE HONORABLE CAROLYN B. MALONEY JUNE 9, 1999

Thank you Mr. Chairman. Today we will consider three related issues, all of which deal with how and where to count certain populations during the census. As Director Prewitt has pointed out, the census is not just about counting people. The census must count all of the people and matching them to specific addresses as of April 1st.

As the census has evolved over the past two centuries, the rules governing where people have counted have evolved to meet the changing character of society. It is quite proper for Congress, which is Constitutionally charged with conducting the census, to consider who should be counted in the census and where they should be counted. However, if we are going to examine residency rules for the census, we would be better served if we pursued it in a more systematic fashion and in a time frame that allowed for proper consideration of these ideas.

We are 298 days from census day, any change we make today increase the risk of a failed census.

Let me say at this point, Mr. Chairman, that I am pleased that you called this hearing today. There are a number of issues on which this Subcommittee should hold hearings, and I hope that you will see to it that they are addressed. Results from the dress rehearsal have been in for some time, and we have yet to hold a hearing on them. This hearing clearly shows the need for a hearing on residency rules and how they are applied. In addition, Mr. Chairman, I ask that you call a hearing on how the Census Bureau is progressing towards meeting the milestones for the 2000 census. I believe we should give the Census Bureau Director an opportunity to keep the Congress informed as we count down to Census Day. Perhaps, we could ask the Director to provide us with an electronic census clock that counts down the days to April 1, 2000.

Turning again to the issues of the day, the first resolution, introduced by the distinguished Chairman of the International Relations Committee Ben Gilman, is a sense of the Congress resolution which advocates that all Americans living overseas be provided with the opportunity to be counted in the 2000 Census. Let me just say at the outset that I am sympathetic to the desires of overseas Americans to be counted. It is a laudable patriotic motive which we should do all we can to accommodate.

However, the proposal raises a number of complicated questions, which I hope our witnesses can address today. Counting of overseas Americans can only be done on the voluntary basis of self-enumeration -- much as the mail-out/mail-back portion of the decennial census is done. What cannot be done is any equivalent of the nonresponse follow-up the Census Bureau conducts in this country. As a result, the accuracy of the count of Americans overseas is questionable.

In fact, without a more precise definition of who we are trying to count, a census, or a complete count, of this population is impossible.

A second question is whether overseas Americans should be allocated to states for purposes of apportionment and if so, to which state should they be assigned -- last residence? Legal residence? Leave it completely voluntary? Some have suggested using voter registration; however, it is my understanding that the majority of Americans overseas do not vote.

Finally, the voluntary nature of such a count, coupled with the vagueness of where these people should be counted establishes a dangerous situation. As we will see in discussing the other proposals on the table today, the temptation to try to gain a few more people is tremendous. We could be unintentionally setting the stage for states to try to influence the count of Americans overseas in order to add to their numbers.

It is in order, however, to answer the most important question -- How many Americans are living overseas -- I am drafting legislation which would require a special census of the overseas population as soon after the census as is practicable. That information can be used by the Census Bureau to more precisely define this population, and in turn, will allow Congress to consider the inclusion of this population in the 2010 census. Without in any way criticizing the professionalism of the Census Bureau, I believe that such a survey would be much better in quality than anything the Bureau could improvise now, at this late date in an *ad hoc* manner.

I will be providing each of the witnesses with a discussion copy of that legislation and I would hope that, after considering the draft, you would contact me with your reactions to the bill.

Mr. Chairman, this is one thing we can agree on. I hope you will cosponsor this bill so that together we can be a part of the solution to this problem.

Today we will also consider two other bills. H.R. 1632, introduced by Rep. Green, requires that prisoners housed out-of-state be counted as residents of the state paying for their incarceration. A bill proposed by Subcommittee member Rep. Ryan, requires that active duty military personnel and their dependents be counted at their "home-of-record." These bills were presumably introduced with the intent of boosting the population totals for Wisconsin, which may lose a seat after the 2000 reapportionment. I certainly understand the motives of these bills -- New York will lose two seats if current projections hold true.

But these bills also raise troubling questions and would overturn precedent about where people are counted that date back to the first census. What's more, these bills apparently would not have their desired effect -- an analysis of the proposal on the military done for me by the Congressional Research Service shows that assigning military personnel to their "home-of-record" would not shift any seats in the House. And even if all of the prisoners housed out of state were counted in Wisconsin, I doubt it would be enough to affect their apportionment.

Mr. Chairman, I would like to have the apportionment tables created by the Congressional Research Service included in the record.

The Census Bureau uses the concept of "usual residence" to decide where to count individuals. A principle established by the first Census Act in 1790 and upheld by the courts as recently as 1992. Usual residence is defined as the place where a person lives and sleeps most of the time. Mandating exceptions to this rule must be done very carefully, if at all, because it raises serious questions. As I said before, I would welcome a thorough Congressional study of the use of usual residence in the census. In fact, I believe that such a study would benefit both Congress and the Census Bureau. We could begin by examining the exception to that rule provided for members of the House and Senate. However, we start down a treacherous path when we encourage changes in census procedures without a thorough understanding of both the intended and unintended consequences.

Mr. MILLER. Mr. Davis, you don't have an opening statement?

Mr. DAVIS OF ILLINOIS. Well, yes, I do.

Mr. MILLER. Oh, OK. Mr. Davis.

Mr. DAVIS OF ILLINOIS. Normally I forgo an opening statement, but I think that these matters are so important. I also think my staff has worked so hard on the issues that I just wouldn't let the opportunity go by, Mr. Chairman.

So, I want to thank you for convening this hearing today to examine issues regarding the counting of Americans residing overseas, prisoners, and military personnel.

This hearing raises a number of interesting questions as we prepare to conduct the 2000 census. As I have indicated before in previous hearings, our main objective must be accuracy and the assurance that everyone is counted.

The issue of a growing number of Americans living abroad has become more prevalent as technology improves. It is not uncommon to have breakfast in Europe and dinner in America on the same day.

Our technological advances have allowed us to dwarf distance and place, time and change. We have made the world a community. Therefore, as more Americans begin to live abroad, we must find a way to ensure that they count in America.

I am certain that because this is such an important issue and the census has become so politicized that we must proceed with thoughtful and careful deliberation on this question.

The Census Bureau has a plan for counting military personnel, Federal employees, and their dependents living abroad. However, I am interested in hearing how they plan to work with overseas Americans to make sure that they count either in this census or certainly, the next one.

Today we also examine H.R. 1632, a bill that would require the Census Bureau to count prisoners in the State that pays more than 50 percent of the cost of their incarcerations. It has been a long established tradition that prisoners, residents of nursing homes, VA hospital patients, and other institutionalized populations should be counted as residents of the State in which the institution or facility is located.

The court upheld this principle in 1992. According to CRS, as of January 1998, approximately 5,877 prisoners were housed out of State, approximately 0.5 percent of all State prisons. In fact, in Illinois we currently have approximately 30 out of 44,000 plus prisoners housed out of State.

To require that those 30 prisoners be counted in Illinois would establish a precedent that could lead to endless exceptions to current census resident rules and create an administrative nightmare. However, I look forward to my colleague, Representative Green, presenting the case as to why this legislation should be adopted.

Finally, we will examine legislation pending by Representative Ryan that would require that military personnel be counted at the individual's home of record. In the 1990 census, military personnel overseas were counted for purposes of apportionment at their homes of record. They were then subtracted out of State population totals for all other purposes.

This legislation would require the Census Bureau to count military personnel for apportionment purposes from the State they enlisted until they leave the military. Currently, the Census Bureau counts U.S. based military personnel as regular citizens via standard enumeration. I am concerned because this legislation would require the Census Bureau to create a whole new design for counting military personnel and could add delay to the 2000 census, which may possibly jeopardize accuracy.

I want to thank the witnesses for coming today to testify. I appreciate all of your efforts, Mr. Chairman, to make sure that we get through this process and thank you very much for the opportunity to present this statement.

Mr. MILLER. Thank you, Mr. Davis.

I think, Mr. Ryan, your opening statement is really relating to your piece of legislation. So, we will call Mr. Green and Mr. Gilman, and we will start with you first as a statement regarding your specific legislation. So, Mark Green, if you want to come up and sit at the table; and then, when Mr. Gilman comes in, we will proceed. But, we will proceed with you as a first statement concerning your piece of legislation.

Mr. RYAN. Thank you, Mr. Chairman. I would like to address the two opening statements that my colleagues on the minority just addressed.

I introduced, last night, legislation that I feel is essential to achieving an accurate count in the census. This is not an attempt to get an extra congressional seat in Wisconsin. It has nothing to do with that. This is an attempt to get a good enumeration count, to get the best census count we can achieve.

The military personnel are a unique group because they often pay taxes and vote in a State in which they are stationed. Now, it is difficult to clearly define their actual residence. I absolutely agree with that. Most would not be residing in the place that they should be stationed were it not for their military service. Many have families in other States. My bill would provide clarity by ensuring that military personnel are allocated in their home of record. This will ensure that Federal funding and redistricting are based on an accurate count of the population.

Currently, the Census Bureau plans on using home of record data for counting military personnel who are stationed overseas. I am bringing this, extending it to domestic use. This bill requires that the Census Bureau work in partnership with the Department of Defense to count military personnel who have been stationed in the United States as well.

This bill is not a radical shift in the policy for census. In the census of 1990, as well as the 1970 census, the Department of Commerce utilized the home of record data. In 1992, the Supreme Court stated that the Secretary of the Department of Commerce was acting within the law when he used the home of record data from personnel files to count military personnel in the 1990 census. There is precedent. This is not a radical shift in policy. It was buttressed by the Supreme Court in 1992.

I am not seeking to uproot years of tradition here today. I am merely fighting to ensure that the census is done in a fair and eq-

uitable manner. I think Congressman Green's legislation does the exact same thing.

Accounting for all U.S. citizens in their proper homes is what we should achieve to do. These men and women have claimed a State to be their home. Why shouldn't we honor that claim? There are many States that, merely based on location, have been chosen to house military personnel. Counting military personnel as residents of these States when they are actually voting and paying taxes elsewhere simply just doesn't make sense. I urge my colleagues to join me in supporting this legislation.

And, I just want to reemphasize the earlier comments. This is not an attempt try to rig the numbers. This is not an attempt to try to help a State that may lose a congressional seat. This is an attempt to have an accurate enumeration. This is an attempt to apply the same standard used for overseas military bases to domestic military bases. We have a lot of people in Wisconsin, but I am sure there are a lot of people in New York and Illinois and other States who are sent to other States but who still pay taxes in those States and vote in those States they will return to after their military service is done within the same decade. I think it is very important that this legislation be passed and this will help our actual enumeration.

Thank you.

Mr. MILLER. Thank you.

We will proceed with Mr. Green next. And hopefully Mr. Gilman is here, and then we will go to questions.

Mr. Green, welcome.

STATEMENT OF HON. MARK GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. GREEN. Thank you.

Thank you, Mr. Chairman. And thank you, members of the subcommittee.

Mr. Chairman, as we approach the 2000 census, we also need to ensure a fair and accurate enumeration of the population. I know the chairman and the members of the subcommittee have been diligent in working toward this end, and I am grateful for this opportunity to testify before the subcommittee on my proposal regarding census protocol for prisoners who are convicted and sentenced in one State and temporarily incarcerated in another.

To put it simply, I believe these prisoners should be counted as residents of their originating State for a number of common sense reasons.

First, as we are all aware, a significant portion of Federal funds are distributed to States based upon population counts. In fact, the Census Bureau cites access to Federal dollars as a compelling reason to fill out census forms. If we count prisoners temporarily housed in other States as residents of those States, then the originating States will lose out on Federal dollars, and the temporary host State will essentially be paid twice.

Second, despite the temporary location of prisoners in another State at the time of enumeration, the originating State continues to bear both financial and legal responsibility for the prisoner.

Third, if the purpose of the census is to provide an accurate count that is accurate for any extended period, counting prisoners in the temporary host State will be inaccurate, as many of the prisoners only temporarily reside in those States. Every single prisoner who leaves the originating State starts off in that State and is required by contract to return to that State before they can be released or paroled. And during the period of parole, they will be in that originating State.

And fourth, originating States like Wisconsin already compile all the data that the Census Bureau needs to effectively carry out an accurate enumeration of prisoners sent out of State. I say respectfully, contrary to the concerns raised by the Census Bureau Director, it is easy to count such prisoners. Arguably, this method will save the Census Bureau money.

By way of background, as of June 4 of this year, Wisconsin housed over 3,700 prisoners in the States of Texas, Tennessee, Oklahoma, Minnesota, and West Virginia. This number, as the chairman alluded, is expected to grow by an additional 6,159 prisoners by the year 2001, bringing the total number of incarcerated persons outside of Wisconsin close to 10,000, over 50 percent of our prisoner population.

I am here today because of the recently restated practice of the Bureau of the Census to enumerate the prisoners in the county in which they are incarcerated. While this policy may make sense for traditional incarceration models, I do not believe it makes sense with respect to the relatively new practice of States leasing prison space in other States. In other words, temporarily transferring such individuals to other States for incarceration before returning them to the originating States.

This situation, I emphasize, is different than the prisoner counting scenarios that have traditionally been dealt with by census policy and the courts.

Now, under the Census Bureau's current interpretation of the usual residence rule which you will hear a lot about today, there is currently no regard given to the fact that a prisoner's incarceration is being paid for by the taxpayers of another State, the originating State. And I think that is wrong.

The Bureau bases its current practice of counting prisoners on the definition of usual residence as stated in the U.S. Court of Appeals. However, when the courts later reviewed the issues arising in that case in the district court case of *D.C. v. United States Department of Commerce* in 1992, the court stated clearly,

The application of the usual residence rule could well be called into question by States which bear some of the costs for prisoners located in out-of-state penitentiaries. The level of support a locality needs to provide in order to claim residents for census purposes is clearly a decision for which there are no judicially manageable standards available.

Despite the temporary location of prisoners elsewhere, States like Wisconsin, and there are about 30 such States in the Nation right now, clearly bear the majority of the costs associated with the prisoners' incarceration. They bear those costs during the out of State placement. Furthermore, because all such prisoners must return to Wisconsin before release or parole, Wisconsin bears substantial costs after the placement as well.

Looking at it another way, if the 2000 census enumerates prisoners as residents of States that only temporarily host them, then those States which temporarily host those prisoners are essentially being paid twice for the same individual, once through the State-to-State agreement or contract and a second time through increased Federal aid distributed on the basis of those temporary prisoners.

The other side of that, of course, is that the originating State is paying twice. Its taxpayers are paying much more than their share.

Beyond the fiscal ramifications, the practice of counting prisoners as other than the residents of their originating State flies in the face of the basic purpose of the census. Again, since we know that these temporarily hosted prisoners under current practice, are only hosted for a short period of time, in most cases a year or less, we know that they must return to their originating State for processing, further incarceration, or parole prior to release. We know that there is a definite ending point to their temporary housing in the other State. Presumably the census was not intended to treat this short stay in another State as with a definite returning point and a definite location as residence.

Does this all really matter? Well, I believe it does. The purpose of this legislation is not to deal with the issue of whether Wisconsin will lose a congressional seat. I tend to concur with the statement of Mrs. Maloney. I don't believe this will affect whether or not we have a congressional seat. At least, I hope you are correct.

Instead, as we know, according to the Bureau of the Census, numbers are used to help determine the distribution of over \$100 billion in Federal funds and even more in State funds. The GAO issued a report earlier this year which suggested the grants that may be apportioned will total \$185 billion. While the numbers vary, the message is clear: The numbers matter.

It is important to note that extensive information is compiled on prisoners in Wisconsin before they are transferred for temporary housing in another State. Wisconsin Department of Corrections collects data regarding the inmate's personal information, the county of conviction, and incarceration. This information is kept on the prisoner wherever they go, and in the case of a prisoner incarcerated in another State, that information is shared jointly between the two States.

In fact, in Wisconsin, and I am guessing it is the same in most other States, all outgoing inmates are added to a data base where the aforementioned information is made available. Every Friday, the State updates the number of prisoners who are incarcerated elsewhere. The department of corrections in the States that house our prisoners can know in a matter of seconds where a prisoner is located and in what county the individual was convicted and incarcerated in.

If the Bureau of the Census would partner with the State department of corrections, they could effectively gather this information to enumerate the prisoners in their home States; and instead of costing more money, you could argue it would actually cost less.

It is the current practice of the Census Bureau to allow an institution to self-enumerate, which means that the institution staff

would conduct the enumeration after being trained and sworn in by a census crew leader. The census crew leader then returns to pick up the forms. This was most often done for hospitals, prisons, and nursing homes. In the same manner, a Bureau crew leader could deputize an individual at the department of corrections who would be able to assign prisoners local originating addresses for census purposes.

The Bureau of the Census has said that priority one for census 2000 is to build partnerships at every stage of the process. I would encourage the Bureau to partner with the State department of corrections for the benefit of a more accurate census. There is still plenty of time to count prisoners in their home States in the 2000 census. This information is already compiled. However, it is imperative that the Census Bureau and the State administrative agencies effectively partner to gather this information. It can be done.

Mr. Chairman, I appreciate the opportunity to testify. Thank you.

Mr. MILLER. Thank you very much.

[The prepared statement of Hon. Mark Green follows:]

Testimony of Congressman Mark Green

**“Oversight of the 2000 Census: Examining the Bureau’s
Policy to Count Prisoners, Military Personnel, and
Americans Residing Overseas”
June 9, 1999 Room 2247, 10:00 a.m.**

Thank you Mr. Chairman.

Mr. Chairman, as we approach the 2000 Census we need to ensure a fair and accurate enumeration of the population. I know the Chairman and members of the Subcommittee have been diligent in working toward this end and I am pleased to have this opportunity to testify before the subcommittee on any proposal regarding census protocol for prisoners who are convicted and sentenced in one state and incarcerated in another.

To put it simply, I believe these persons should be counted as residents of their originating state for a number of reasons.

First, as we all are aware, a significant portion of federal funds are distributed to states based upon population counts. In fact, the Census Bureau sites access to federal dollars as a compelling reason to fill out census forms. If we count prisoners temporarily housed in other states as residents of those states than the originating states will lose out on federal dollars and the temporary host will receive payments twice.

Second, despite the temporary location of prisoners at the time of enumeration, the originating state continues to bear both financial responsibility and legal responsibility for the prisoner.

Third, if the census is designed to provide an accurate count for the following decade, counting prisoners in the temporary host state will be inaccurate as many of the prisoners will only briefly reside in those states. Every single prisoner who leaves the state is required by contract to return to the originating state before they can be released or paroled.

Fourth, originating states like Wisconsin already compile all the data the Census Bureau needs to effectively carry out an accurate enumeration of prisoners sent out of state.

By way of background, as of June 4, 1999, Wisconsin housed over 3,700 prisoners (3,751 prisoners) in Texas, Tennessee, Oklahoma, Minnesota, and West Virginia. This number is expected to grow by an additional 6,159 prisoners by 2001 - bringing the total number of incarcerated persons outside Wisconsin close to 10,000 - over 50 percent of our prisoner population.

I am here today because of the recently restated practice of the Bureau of the Census to enumerate prisoners in the county in which they are incarcerated - not the originating county which bears the responsibility for the prisoner. While the policy may make sense for traditional incarceration models, I do not believe it makes sense with respect to the practice of states "leasing" prison space in other states - temporarily transferring such individuals to other states for incarceration before returning them to the originating states.

There is currently no regard given to the fact that a prisoner's incarceration is being paid for by the taxpayers of another state, the originating state. I believe this is wrong.

The Bureau bases its current practice of counting prisoners on the definition of "usual residence" as stated in *Borough of Bethel Park v. Stans*. However, when the courts reviewed this matter in *DC v. US Dept of Commerce, 1992*, the Court stated: **"The application of the usual residence rule could well be called into question by states which bear some of the cost for prisoners located in out-of-state penitentiaries. The level of support a locality needs to provide in order to claim residents for census purposes is clearly a decision for which there are no judicially manageable standards available."**

Despite the temporary location of prisoners elsewhere, states like Wisconsin clearly bear the majority of the costs associated with a prisoner's incarceration. They bear costs during the out-of-state placement and because all such prisoners must return to Wisconsin before release or parole, they bear substantial costs after the placement.

Imagine what would happen if Wisconsin sent 100 prisoners to Texas and upon their arrival, Wisconsin refused to pay for their incarceration. Would Texas continue the incarceration with all of its costs or would Wisconsin be liable? The answer is obvious. If a state's taxpayers assume the financial and legal responsibility for incarcerating an individual in another state, then the incarcerated person should be counted in the state bearing that financial and legal responsibility.

As stated Earlier, If the 2000 Census enumerates prisoners as residents of states that only temporarily host them, then the originating states will lose federal funds – even though their taxpayers must still pay the costs of incarceration through contractual payments to other states. In other words, those states which temporarily host prisoners are essentially being paid twice for the same individual: once through the state-to-state agreement and a second time through increased federal aid distributed on the basis of temporary prisoners. The other side of that, of course, is that the originating state is paying twice – its taxpayers are paying much more than their share.

Beyond the fiscal ramifications, the practice of counting prisoners as other than residents of their originating state flies in the face of the basic purpose of the Census. Since we know that temporarily hosted prisoners under current practice are only hosted for short periods of time and that they **must** return to their originating state for processing, further incarceration or parole prior to release, **we know** a definite ending point to their "residence." Presumably the Census was not intended to treat this short stay in another state as residence.

Does all of this really matter? It most certainly does. According to the Bureau of the Census, census "numbers are used to help determine the distribution of over \$100 billion in federal funds and even more in state funds." In February of 1999, GAO issued a report, *Effects of Adjusted Population Counts on Federal Funding to States*, indicating that population counts derived from the decennial census are often used to apportion

federal grants totaling \$185 billion. While the numbers vary, the message is quite clear: the numbers count.

It is important to note that extensive information is compiled on a prisoner before they are transferred for housing in another state. The Wisconsin Department of Corrections (WDOC) will collect data regarding the inmates' personal information, the county of conviction and incarceration. This information will follow the prisoner wherever they go and in the case of a prisoner incarcerated in another state the information is shared jointly between the two states.

In fact, in Wisconsin all outgoing inmates are added to a database where the aforementioned information is made readily available. Every Friday the Department of Corrections updates the number of prisoners who are incarcerated in other states. WDOC and the states that house our prisoners can know in a matter of seconds where a prisoner is located, and in what county the individual was convicted and incarcerated in. If the Bureau of the Census would partner with state DOCs they could effectively gather information to enumerate these prisoners in their home states.

It is the current practice of the Census Bureau to allow an institution to self-enumerate, which means that the institution's staff would conduct the enumeration after being trained and sworn in by a census crew leader. The census crew leader then returns to pickup the completed forms. This is most often done for prisons, hospitals, and nursing homes. In this same manner, a bureau crew leader could deputize an individual at the department of corrections who would be able to assign prisoners' local originating addresses for census purposes.

The Bureau of the Census contends that "Priority One for Census 2000 is to build partnerships at every stage of the process." I encourage the Bureau to partner with state Departments of Corrections for the benefit of a more accurate census.

There is still time to count prisoners in their home state in the 2000 Census. However, it is imperative that the Census Bureau and state administrative agencies partner to effectively gather information for the count. It can be done.

Thank you Mr. Chairman.

Mr. MILLER. And we are pleased now to have the chairman of the International Relations Committee and a member of our full committee, Mr. Gilman.

**STATEMENT OF HON. BENJAMIN GILMAN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. GILMAN. Thank you, Mr. Chairman. I want to thank our colleagues for conducting this important hearing. I am here to stress the importance of including Americans abroad in the 2000 census. This morning, I come before you as a member who served many years on the International Relations Committee, but I also served on the former Post Office and Civil Service Committee, where we dealt with the issue of providing an accurate census count for many years. And I feel that that is so important, and I am pleased you are addressing this problem.

In those roles I have had numerous dealings with our American citizens living and working overseas and can attest to the increasingly important role that that segment of our population plays in our Nation's economy and in our relations with other countries and their citizens throughout the world. As a matter of fact, in the last election, some 750,000 citizens living abroad did vote, and they estimate there are close to 3 million living abroad who are working in government and in business overseas and want to be included in any census and want to be included in any political activity.

In this era of growing globalization, we are well aware of the importance placed upon our Nation's exports and goods and services overseas in an effort to provide a strong and versatile economy. Not only are we reliant on Americans abroad to carry out exports for the creation of U.S.-based jobs, but we rely on these citizens to best promote and advance our interests throughout the world.

Nevertheless, the Census Bureau does not count private-sector Americans residing abroad despite the fact that government employees working overseas are currently included in the U.S. census. So, we have a discriminatory factor.

This is an inconsistent and inappropriate policy, especially if the Census Bureau is true to its word that it wants census 2000 to be the most accurate census available.

Accordingly, I am introducing a resolution expressing support for the inclusion in census 2000 of all Americans residing abroad, and I will be joined in that effort by Senator Spencer Abraham, who is introducing a companion measure in the Senate. Our resolution will direct the U.S. Census Bureau to include all American citizens residing overseas in its census 2000, not just federally affiliated Americans, and expresses the intention of Congress to approve legislation authorizing and appropriating the funds needed to carry out that directive.

And in closing, I would like to reiterate the need for our Census Bureau to count all Americans, including private citizens living and working abroad. Not only will such a policy provide an accurate census 2000, but it will allow Congress and private-sector leaders to realize how best to support our U.S. companies and our citizenry abroad. U.S. citizens abroad vote, they pay taxes in our country, yet they are discriminated against by our government solely because they are private citizens. Mr. Chairman, I hope that you will

join with us in allowing us to change this policy to include private-sector Americans residing overseas in the census.

American citizens abroad have devised an official overseas citizen census card that will obviate the necessity for having much bureaucracy involved. A very simple statement can help take care of that problem. And they can register with their passport numbers so there will be proper identification.

Thank you, Mr. Chairman. I thank my colleagues for your patience.

Mr. MILLER. Thank you, and I thank all three of you for your statements.

As you know, we do have a vote going on. But, Mr. Gilman, as you may know, we have Director Prewitt coming up next on the panel who can respond to a lot of the concerns and questions raised by all three of your statements, and after that, we have five members representing the different groups advocating the need to count overseas Americans that I look forward to hearing from. So, I am going to reserve my comments and questions concerning overseas to the next couple of panels.

You are going to be able to return, Mr. Ryan. Are you going to be able to return, Mr. Gilman? You have other hearings, so you may not. I understand that. Do any of the members have questions of Mr. Gilman? Otherwise, we will take a break and come right back and continue with our questions for Mr. Green and Mr. Ryan.

Mrs. MALONEY. I would just like to compliment the gentleman from the great State of New York for his testimony today and his leadership on so many issues that are important to our Nation.

Mr. GILMAN. Thank you.

Mrs. MALONEY. And also to my colleagues, Mr. Ryan and Mr. Green. And I think you raised an important point. I know I am not supposed to question you now, but I just have to raise one area. When I read it, immediately I started thinking about New York State. And as Ben knows, we not only export prisoners but we move them around the State to the less populous areas of the State, the wilderness, and build prisons. So, if you take this to the next step the question is, would you then count them where they are in residence in a different area of the State?

Also, in New York, as Ben knows, many social service agencies export foster care, adoption-ready children. There are a number of areas—we would have to research it—where we literally pay for the service. For example, in foster care we have some sites in Pennsylvania where many New York children go to sort of a country environment to be helped.

So, you raise a lot of questions that not only apply to prisoners but all the other sort of government programs that move people around, whether out of State or within a State. And I think it is an issue that needs to be really studied on its ramifications, because if you are going to do it for prisoners, then the argument is you should do it for every other incident or example where someone may be moved around the State or out of the State yet still provided for mainly by the State.

I just raise that as a question to be looked at, and again I thank anyone who has a thoughtful statement and interest in getting a more accurate count.

Mr. MILLER. Mr. Davis, do you have a specific question for Mr. Gilman?

Mr. DAVIS OF ILLINOIS. No, Mr. Chairman.

Mr. MILLER. Mr. Ryan.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. MILLER. Thank you, very much. Mr. Green, if you will come back, we will recess for 10 minutes or so. As soon as we get our vote over, we will come right back.

[Recess.]

Mr. MILLER. The hearing will continue, and we will reconvene the hearing. We will start with some questions.

Mr. Gilman will not be coming back. Mrs. Maloney will be a little while before she is back and Mr. Green will be back. But let me start, if I may, with Mr. Ryan to clarify a little bit.

This whole issue of military residents and the issue of prisoners brings up the complexity of the job that the Census Bureau really has. If someone signs up in the military and then moves to Pensacola and is stationed there, and family is there in school and they vote there, would they be counted there or how does your bill address it?

Mr. RYAN. It is the home-of-record data. The Census Bureau went through this same quandary back in 1990. They chose to go with the home-of-record data over legal residence and other definitions because they thought this was the best way to do it. You don't have an income tax in Florida.

Mr. MILLER. Correct.

Mr. RYAN. In States like Florida, legal residents and other definitions don't apply because they rely on income tax data, which you don't have. So, they chose in 1990 to go with the home-of-record data, which the court upheld 2 years later. What it means is for people, say from Wisconsin, who go to Pensacola and who continue to choose Wisconsin as their residence, pay taxes there, vote there, but are based in Pensacola, their home-of-record data is Wisconsin. They will be counted in Wisconsin. If they move to Pensacola and choose to claim Pensacola as their home of record, they will be counted in Florida. I think a lot of military residents do change their home of record to Florida because of income tax purposes. Those military personnel would be counted there.

What we are saying is extend the same principle and policy that you use for overseas military personnel as you do for domestic military personnel.

Mr. MILLER. Let's take an overseas person. If they officially claimed Florida residence because of no income tax, but they are really from Wisconsin, where do they get counted?

Mr. RYAN. Let me go to the definition of home of record, because I think that is the best way of clearing this up.

In the fall back positions as defined in the Census Bureau in 1990, and my bill too, if there is no home-of-record data, you go to legal residence and then usual residence, the address a military member had upon entry into the service. This is the definition of home of record.

Home of record is not the same as legal residence. If a military member changes legal residence after entering on active duty, he or she may not revert to claiming the home of record as legal resi-

dence without reestablishing physical presence and intent to remain in the State.

Legal State of residence, that definition is: One must have or have had physical presence in the State and simultaneously the intent to remain or make the State his or her home or domicile. A person can only have one legal residence and specific actions must occur, such as what is listed for withholding income tax or where one is registered to vote. Because of States like Florida and Texas that don't have the income tax data, the Census Bureau, in 1990, decided to go with the home of record.

So, it really comes down to that first definition, home of record. If that data isn't available, then it reverts to legal State of residence, but the home-of-record data is included in my bill to protect States like Florida and Texas, that don't have income taxes, that don't have that kind of data.

Mr. MILLER. We are operating under the 5 minute rule, but we don't have lights. But they are going to get cards flashed or something.

Mr. Green, is there anything comparable to the prison situation—an analogy? People in nursing homes in another State or college students? Is there anything comparable to how they treat that?

Mr. GREEN. In a way there is, by implication. The situation I am referring to is unique, or different than the other scenarios that have been raised, in that the individuals involved will begin their sentence in the originating State. They will return to the originating State. They will complete their sentence in the originating State. They will be paroled in the original State, so on and so forth.

Part of my logic is that the temporary host State is already compensated for any services it provides, and the only services it provides, are those that are defined in my contract. In the case of students, for example, one reason that students are counted in their actual location, the temporary resident State, is that they consume services in that other State for which they are presumably compensated through the Federal Aid System.

That same logic, if we decide State of residence for Census Bureau purposes based upon where they consume services, again I would argue that that logic would mean the originating State should be the State since that is the State which is paying for services and providing services. So, by implication, I guess that would be the parallel I draw. In terms of a precise scenario, I am not aware of one.

Mr. MILLER. I will be looking forward to Director Prewitt's testimony following this. How large of an issue is this? You said 3,500 in Wisconsin?

Mr. GREEN. Temporarily projected to grow to 10,000 by the year 2001.

Mr. MILLER. How many States export prisoners? This is a new issue to me.

Mr. GREEN. It is a new issue. This particular scenario is fairly new. That is why we bring it up now. This was not a common practice until rather recently. It is my understanding this didn't begin until the mid-1980's. It didn't begin in Wisconsin until the mid-1990's; 1995 or 1996 is when it came in, so it is a fairly new issue.

Our best information is that about 30 States export prisoners. Those numbers are harder to come by than you might think. We have been talking with the council for State governments, NCSL. That is our best information.

Mr. MILLER. Thank you, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman. With all due respect to you and the State of Florida, I don't think I want to use that example when I ask my question. It seemed to be too many incentives. But, at any rate, Representative Ryan, do you know if there is any data on the number of individuals who might change or who have actually changed their residence in terms of point of origin or individuals who did go into the military and after having been stationed, maybe—

Mr. RYAN. Change the home of record.

Mr. DAVIS. Yeah, and another State actually changed their home of record?

Mr. RYAN. I can't answer that question. We don't have that data, but we just asked DOD for home-of-record data. I just got this spreadsheet handed to me so we know that, as of July 1998, a total of 1,229,360 military personnel stationed in the 50 States have home-of-record data. Illinois, this would affect 29—a little over 29,000 military personnel. 54,000 military personnel are exported from New York to domestic bases. In our home State of Wisconsin 19,000 military personnel—this is a question that was just asked me before.

I didn't have this spreadsheet until now. I don't have the actual difference between people who change their home of record who leave the State, but this answers part of that question.

Mr. DAVIS. I know we are trying to get at the whole question of fairness and the issue of fairness and when we talk about fairness, I am often reminded of the discussion between the worm and the bird and somebody asks, is it fair for worms to eat birds or is it fair for birds to eat worms. And if you are a worm, you have got one answer. If you are a bird, you have got another answer. And, I guess, in terms of the numbers that States are looking for or just in terms of the accuracy, there is some unfairness that would probably result either way if they are individuals who would be stationed in one location home of record, but for all practical purposes, they have become residents of where they are. But let me go to Representative Green and ask a question—

Mr. RYAN. If I could just mention one point on that. None of these definitions are perfect. One of the bases of the home of record definition that the Supreme Court used is that the Defense Department will pay moving expenses for a military person who, say, has an honorable discharge, leaves the Army, leaves the Navy and then goes back home. DOD will pay all his moving expenses.

Home-of-record data applies to where they would send those people back, how they would cover those as moving expenses provided the person goes back to their home of record. If a person is in Illinois, goes to Fort Bragg in North Carolina; when their term expires in the military, where would they go? If it is back to Illinois, that would be their home-of-record data.

So, that is the best attempt to try and get at the true home of the person in the military. If the person chooses to stay in North

Carolina, reside in North Carolina, pay taxes in North Carolina, and after their term expires, live in North Carolina, then that is also included partially in this definition.

Mr. DAVIS. Thank you. Representative Green, do you know how many other categories of individuals would need to be looked at if we took your position relative to the counting of prisoners?

Mr. GREEN. I am not aware of any that would necessarily be. The reason I say that is because this scenario is different than nearly every other one that has been raised so far. The relationship and the location of the prisoner is defined by contract entered into between two sovereign States and is unlike the open-ended scenarios where a student goes to another State for a university and may not return and may not receive benefits from the originating State. In this case, we are talking about individuals that must begin their sentence in the originating State and must end their sentence in the originating State.

They come back. It is definite. Unless they pass away, they have to come back and be processed. So, I think that makes it different than all the other scenarios that have been spoken of.

And second, in this scenario, the temporary hosting State is compensated. It is compensated financially from the originating State. So, they are being offset for all costs incurred by reason of the prisoner being there and that is defined by contract.

Mr. DAVIS. Would that not be the same for individuals who are sent out for treatment purposes? If the State of Illinois contracts with the State of Colorado to handle 50 young people with special mental health needs, would that not be the same?

Mr. GREEN. Those individuals, again, would all depend on what type of order they are under. Those individuals wouldn't necessarily return to the home State.

In my scenario, they have to. By law, they have to return, and I guess I am not as familiar with what the financial responsibility is. I am going for the State of origin.

Mr. DAVIS. These are business arrangements. They are contractual business arrangements.

Mr. GREEN. I guess what I mean is, in the originating State, in the Wisconsin scenario, the one I am most familiar with, Wisconsin during that entire time is paying over half the cost for those prisoners. I don't know what the scenario would be that you are referring to.

Mr. DAVIS. Full cost.

Mr. GREEN. That wouldn't be the case. Would those individuals have to come back and complete some kind of ordered time in their home State?

Mr. DAVIS. They are citizens of the State of Illinois. I mean, they aren't Illinois residents and Illinois has the responsibility for caring for them. They just don't have the facility nor the service, or they find that it is more cost efficient to do it another way, as I would imagine that the State of Wisconsin is finding with its prison population.

Mr. GREEN. I guess what I mean is, are those individuals being committed to the home State under a judicially imposed order with a beginning and starting point? That is the distinction I am trying to draw.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. MILLER. Mr. Ryan.

Mr. RYAN. I would like to ask Mr. Green a couple of questions. Just to clarify. What happens to a prisoner if the term expires while they are incarcerated in another State?

Mr. GREEN. The term of sentence?

Mr. RYAN. Yes.

Mr. GREEN. They have to return to the home State for processing. They are still currently paroled in Wisconsin; they have to go back.

Mr. RYAN. That is an important point, I think, as well. What do you think about the Bureau's response to your legislation that there is not enough time to implement the program for testing and evaluation?

Mr. GREEN. With the case of Wisconsin, that simply isn't true. All the information that would be necessary for the Census Bureau to complete its work is already compiled and is updated weekly by the department of corrections.

Again, since the State bares legal and financial responsibility, that information is absolutely accurate and is readily available.

Mr. RYAN. Thank you.

Mr. MILLER. Did you have a concluding comment?

Mr. GREEN. Mr. Chairman, if I could respond to a question raised by Mrs. Maloney before we broke just to clarify. She appropriately raised a question that I believe will be raised by the Census Bureau as to what the county of residence would be, and that is actually already determined under State law. It is the county of incarceration, or if there isn't a determinable county of incarceration, it is the county where those prisoners are processed.

In Wisconsin, that is Dodge County. If the committee would be more comfortable by spelling it out explicitly in this legislation, we could do so; and I don't believe that would substantively change current law.

Mr. MILLER. Thank you. I have seen in articles, I think it was the Pine Bluff Arkansas, the annex for prisons into the county or city in order to increase their population.

Some cities don't want the prisoners. It becomes a local issue too. Well, thank you very much for your presentation here today, Mr. Green and Mr. Ryan, as part of the panel. Thank you very much. We will proceed to the next panel. Director Prewitt will be coming up and we will proceed.

[Witness sworn.]

Mr. MILLER. Let the record show that Dr. Prewitt answered in the affirmative.

We have three issues brought up by the Members and I would like to let you proceed and enlighten us.

Mr. PREWITT. Thank you very much, Mr. Chairman, and to Mr. Davis, Mr. Ryan.

Mr. MILLER. Put the microphone a little bit closer to you.

STATEMENT OF KENNETH PREWITT, DIRECTOR, BUREAU OF THE CENSUS

Mr. PREWITT. I started with the obligatory thank you. I would like to rerecord my thank you to the chairman, to Mr. Davis, Mr.

Ryan, and Mrs. Maloney for this opportunity to testify this morning.

I want to emphasize at the outset that the issues that have been put on the table are difficult and complex, as has already been alluded to. But they are also ones with which it is very easy to sympathize and appreciate the motivations behind the bringing these three pieces of legislation to the table.

They are difficult and they do, we think, deserve a thorough study before we would change major policy, especially policy with respect to usual resident concepts, either with regard to prisoners or U.S. military personnel outside their home State. It is extremely important that any policy changes are consistent with the original intent of the census to determine the whole number of persons in each State for purposes of apportionment.

And if the Congress believes that all America's private overseas citizens should be included in the decennial, then we would urge that, at first commission, some indepth studies that would shed light on these complexities, and I will get to these complexities momentarily.

Let me address first the issue of Americans overseas, as it has been recommended by Mr. Gilman. The Census Bureau staff did meet with representatives of the Census 2000 Coalition on this issue in early May to discuss their reactions to our concerns and their proposals for overcoming these concerns.

And after carefully reviewing the coalition's proposals and studying the viability of the technical aspects involved, the Bureau has concluded that it cannot credibly enumerate the population of American citizens living abroad for census 2000. There are conceptual issues, such as whether to count retirees and other persons unlikely to return to the United States. We have serious concerns about our inability to validate responses and, of course, about the complex operation of such a worldwide enumeration.

I would like to, at this moment, simply draw your attention to the form which has been presented here for our attention. And I would like to say for the record, sir, that I would urge that before these forms are circulated any wider, that they say in bold print that this is not an official government document.

It does not say so now. It gives every resemblance to something that is an official U.S. document. It uses the official U.S. Bureau Website. If you turn over to the address page, anyone picking this up would presume they should mail this back to the U.S. Bureau of Census. I only use this to suggest how complex this issue is and how very well-intentioned efforts to cooperate can run up against some difficulties, even the presentation of forms which would suggest that the U.S. Census Bureau has decided to count the population and already has designed a form and distributed it.

So, I would urge our friends and colleagues who are concerned about this issue to please not circulate this document without identifying it as not an official government document. Thank you.

Let me then turn to the question of accuracy and why we have such concerns about the accuracy of the information we could obtain from any attempt to enumerate private American citizens overseas. The difficulty is we cannot accurately estimate the size of the universe of this population, so we do not have the means of

controlling and checking its progress as we do here at home, where we use the master address file to control the enumeration.

Embassy and consulate lists of American citizens living in their jurisdictions generally are outdated or incomplete, since there is no requirement for citizens to register with them upon entering or leaving the country.

What we do, as you appreciate in the census, of course, is we do ask people to mail in the questionnaire. For those who don't, we have very precise processes of doing a non-response followup. Up to six return calls, three personal calls, three telephone calls, making all kinds of efforts and then close-out procedures because we start with some sense of the universe that we are trying to reach. And we use the address file as the marker or the denominator for what we think the universe is.

With respect to the Americans overseas, we simply have no way of knowing what that universe is and, therefore, no method of trying to find the non-respondents. So, in effect, it converts the overseas census into a voluntary census, which is fundamentally different from the stateside census which is not a voluntary, but a mandatory census. And the Census Bureau does everything it can to reach everyone.

We are not sure what the procedures are by which we would try to reach everyone. As Mr. Gilman said, his resolution calls for us to count all Americans overseas. It is not clear how we will do that, and that is why I want to stress that there is something fundamentally different between the proposal that's on the table and the stateside census which starts with a control factor, the master address file, and then uses non-response followup to try to reach as complete a count as it possibly can.

Now, what are the implications of that? Congressman Miller, in your covering memo, you used the estimate of 3 million Americans and then suggested that perhaps we would count as many as 1 million of them. That is, you would recognize that there could be an undercount of 66 percent, fairly high undercount as a census goes.

Ms. Schooneveld says that perhaps the number of American citizens abroad is 5 to 6 million. Let us say 5. If we counted a million of the 5, we would have an undercount of 80 percent. There are other documents, their own newsletter that says the overseas count may be up to 10 million, which means we would have an undercount of 90 percent.

So whether it is a 66 percent undercount or an 80 percent undercount or a 90 percent undercount or only a 50 percent undercount, we have every reason to presume it is a fairly high undercount. Without the capacity to go out and check on it, we don't have a control factor like we have with the master address file stateside.

Now, why is that consequential? There is no a priori reason to presume that this high undercount would be distributed across home of record proportionate to the true distribution of home of record for the overseas Americans. Let me give you a simple example, hypothetical.

Let us say that we did a particularly good job in Mexico where many, many Americans live in retirement communities and so forth. We did a very poor job in Canada, where there are also a

very large number of overseas Americans. The reason we did a poorer job in Canada, of course, is Canadian-Americans. Americans living in Canada are not required to have passports. Whereas in Mexico, let us say we did a better job.

Now, if that were to happen, we do better in some parts of the world than other parts of the world, the question we would have to ask ourselves: Are the people, the Americans who live in those different parts of the world, randomly distributed or proportionately distributed according to home of record? My guess is that the Americans living in Canada are much, much more likely to come from the northern tier of the States, and the Americans living in Mexico are much more likely to come from the southwestern tier of the States.

So, if we did a very good job counting in Mexico and a very poor job counting in Canada, then we would have produced a distortion to the apportionment accounts. It is a distortion to the magnitude that we could not estimate, nor could we correct for it. I think the implications of not being able to reach 1 out of 3, or 1 out of 5, or 1 out of 10, or 1 out of 2, the magnitude of the undercount would be such that we would necessarily introduce some distortions into the apportionment account.

That would, of course, invite litigation and all the other kinds of concerns that have already been expressed by this Congress with respect to the implications of the undercount. When the undercount is 1.5 percent and we have mechanisms to try to reduce it, then it is a very different phenomena than if it is a 50, 60, or 70 percent undercount because the level of distortion and apportionment numbers is accordingly large.

We take very seriously this question of accuracy and completeness, as you appreciate. And we have a particular problem with the overseas Americans. We simply do not have a current solution to that problem. If we had one, we'd put it on the table, and we would be happy to talk to the U.S. Congress about how to respond to this legitimate concern; but, we do not have a solution to this issue.

Second, we do not have a ready solution to the problem of validation and verification. We very much appreciate the work by the counting citizens abroad group, in terms of trying to use passports as a validation and verification process.

We feel there is real hope in that strategy. We'd like to investigate it further. There is a big difference between how we count U.S. military overseas and how we would have to count the private citizens overseas. The U.S. military overseas count is based upon administrative records and the Federal employees overseas is based upon administrative records.

We have every reason to presume that we get a complete count or a reasonably complete count, and certainly a highly valid count, from working with the Department of Defense and the Department of State, with respect to their own employees.

The military and Federal employees differ from the private citizens. One is mandatory because you are using administrative records. It is not that someone could self-select themselves out of the count if you are in the U.S. military on a military base, but if you are a private citizen, because it is voluntary, you could decide

not to be counted and we would have no way of knowing the magnitude of that.

Second, for the military Federal employees, we use administrative records. For private citizens, they are recommending we use a postcard, the sort I already identified. For military and Federal employees, we have well-established procedures to make sure there is no possibility of fraudulent responses. With respect to the private citizens overseas, it would be extremely difficult to validate and make sure every record did match the people that had responded in the way they responded.

For military and Federal employees overseas, we have a low to zero undercount problem. I have already suggested for the private citizens, we'd have a very high undercount problem. And I have suggested for the military and Federal employees overseas, we had reasonably good precise ways of allocating them back to their home of record because the administrative records make this very clear.

With respect to the private citizens, we have the potential for high levels of misallocation, therefore the possibility of distorting the apportionment accounts. So, the problem of accuracy and validation really does beset this very complicated problem when we simply don't know whether it is 2 to 3 million or 8 to 9 million residents.

Let me then just quickly turn to the operation of complexity. Even if we could solve the problems of accuracy, validation and verification, we would run into, as we appreciate, very complicated operational problems. Processing results from this enumeration would require the matching of files, development of procedures for resolving matching problems, and deciding how to handle unmatched cases.

Where would these matching problems come from? Well, with respect to the military and the Federal employees living overseas, we use the administrative record to count them and their dependents. They don't know they've been counted. We work that out with the Department of Defense.

And so then, we would suddenly have a form like this floating around. There is absolutely no reason to imagine that a dependent for the State Department or military dependent wouldn't see this and say, oh, my goodness, we want to be counted in the census, therefore we better send this in. We've already counted them in the administrative records from the Department of Defense.

We have a serious matching problem, and we don't have a mechanism by which we could unduplicate those forms, so we would be introducing double counts, as well as undercounts, in the overseas population.

Indeed, to make an earnest and effective attempt to reach this population, the Census Bureau would need to obtain the commitment of considerable staff support from the State Department. The State Department would have to provide address lists of embassies and consulates by countries worldwide, along with the current estimates of the number of American citizens living in each embassy and consular jurisdiction. We all know those records are defective and incomplete.

The State Department would be the primary agent for most of the logistics associated with the overseas publicity of the enumera-

tion along with the distribution of the bulk of the census forms. And, indeed, if the overseas form asked for passport numbers, as has been recommended, the State Department would have to match a file of passports on the overseas forms with their official passport files.

And, indeed, we have been in contact with the State Department. They do suggest to us that there are very complicated things involved in this and it would be costly. The Census Bureau, of course, would have to compensate the State Department for its efforts in this regard.

Indeed, I can conclude my comments on this with simply mentioning the cost. We would need 1999 funds because we would have to start doing preparatory work immediately, which means another supplemental. As we appreciate, it would not be difficult to get it through the Congress at present. Of course, we would have to increase our 2000 budget. I can't offer if it is a large number or small number, but certainly we'd have to redesign our budget and redesign our master activity schedule. There would be a very large number of procedures at this stage which we would have to introduce if we wanted to do this right.

Now, could we do a poor job, a sloppy job, an inaccurate job, a job which might risk distorting the apportionment numbers? Certainly. Would the Census Bureau want to do that kind of job? Of course not.

So, we would urge Congress that if we want to change policy with respect to this very, very serious issue, that it is done so only on the basis of some systematic work that has yet to be done. I can only apologize that it has not been done, but it will itself be costly and require some serious investigation of how to do it.

Let me turn quickly to H.R. 1632, which relates to how we would count prisoners abroad. Now, many of the Census Bureau's concerns have already been voiced by questions from Mr. Davis, from yourself, and from Mrs. Maloney, when she was here. The way that we count prisoners and other institution populations of the State in which the institution or facility is located is, of course, consistent with the usual residence concept the Census Bureau has used to decide where to count people in the census. This is a principal first used by the Congress for the census of 1790. It is defined as the place where the person lives and sleeps most of the time.

Usual residence is not necessarily the same as the person's legal residence. The usual residence concept was approved by a U.S. Court of Appeals in 1971 and reconfirmed in a 1992 decision by the District Court for the District of Columbia, where some of these questions of counting prisoners were addressed in the court system. The judgment has been that the way we do usual residence is neither capricious nor arbitrary.

This legislation, if passed, would mandate an exception to the judicially approved usual residence concept and doing so, as the questions have already indicated, could open up a Pandora's box or pressures for other exceptions to our residency rules.

It has already been noted by Mr. Davis and Mrs. Maloney that there are other out-of-State programs. I very much appreciate the distinction that Mr. Green made with respect to whether they are contractually obligated to come back to the State. That may be a

workable distinction. Mr. Green himself, in his testimony, spoke compellingly of Wisconsin's level of information on this, though Mr. Green did say that their home of record in Wisconsin only took them back to the county.

Now, as you appreciate, a major oversight committee for the census, that coding someone back to the county of residence is inadequate, of course, for redistricting purposes and Federal funding purposes. We have to simply code them back to a lower geographic detail than the county.

We appreciate the fact that Wisconsin may have very good records, but we could not use them. We would have to get a home address that we could geocode down to the block level, of course, to be consistent with the rest of our census.

As Mr. Green himself acknowledged, he cannot even get a good count of how many other States export prisoners, let alone how many other States have data of the quality that Wisconsin has, which is already defective for our purposes.

So even though we can acknowledge that there could well be this data available, we would now have to visit all 50 States to find out the quality of their recordkeeping for their exported prisoners, even before we get to the issues that Mr. Davis raises, which are non-prisoner exported personnel.

It raises all of the issues that have already been put on the table, and I don't have to try to repeat them yet again. We would have to also develop new procedures for working with prison administrators on a case-by-case basis. Without testing and evaluation, we could not know whether prison officials would have good records that would show the 50 percent marker, that is, is this particular prisoner's incarceration paid for at a 50 percent level.

A contract between States may indicate that one State has to pay another a certain lump sum per prisoner, but not indicate the total cost of custodial care. Therefore, it would be up to us to decide whether 50 percent was met. It may well be that Wisconsin contracts make that very specific, but it may well be that some other States are vaguer on that. It just simply may be a payment per prisoner. We would then have to determine whether it met the 50 percent rule.

The bill is also silent on whether this is only for State-supported prisoners and State-run correctional facilities or whether prisoners and facilities at the local level, as well as privately run prisoners, would be included. And, of course, the bill makes no reference to Federal prisoners who are, in general, more likely to be incarcerated outside their home State. These are some of the issues that would have to be resolved before we could begin to implement Mr. Green's legislative initiative.

Finally, if I can turn to Mr. Ryan's legislation quickly, we have had that legislation for a very short time. I appreciate how sometimes things take a while to turn themselves out. That's even true at the Census Bureau. And therefore, we haven't given it the kind of time and attention that we would like to.

As has been established, we do count U.S. military and their dependents assigned overseas back to their home of record using again, I stress, agency administrative records. And I think what Mr. Ryan would like us to do is try to extend the policy that we

now use for overseas military to stateside military, but I do want to stress that in the overseas military populations we do not enumerate. We do not count individuals. We only use the administrative record and use the home of record back to the level of the State, not down to the level of a district or a block or something.

So, we only put them into the apportionment count and not into, of course, the districting or Federal funding formulas. We have some concerns with Mr. Ryan's legislation because, again, it mandates an exception to the usual residence concept for the U.S. base military living stateside, and it could lead to other challenges to the idea of usual residence. We are just reluctant to open that door until we have done the kind of investigation that would find out what kinds of exceptions might be put on the table, what would the implications be, and what would this do to a 200-year practice of usual residence.

Mr. Ryan makes reference, understandably, to paying taxes back in the home State, to having a legal residence in the home State, and so forth; and that does begin to change where you are living and sleeping, which is our usual residence criteria. Mr. Ryan made reference, for example, to the fact that the military does keep records, so they know where they have to ship them back after they've either been honorably discharged or in other words left the military.

I can't resist one anecdote. I lived abroad. I have lived abroad for a large number of years at different times in my professional career. Back to the Americans overseas issue, I am aware that sometimes when I lived abroad, no one knew for sure where I was and did not check in with local embassies or local consulates; but one thing I do remember, Mr. Ryan, was that I was also under a program that allowed me to identify my home of record for purposes of bringing me back.

Well, at that time, I was living in Chicago with my family, but we also spent some summer time in California. Needless to say, my home of record, because I was in east Africa, became California. It became the point furthest from where I was, which then allowed us maximum opportunity to return to almost any place we chose to at the end of our tenure.

So, even home of record, for the purpose of moving people back, is a manipulable, if you will, or changeable or self-designated criteria and is not necessarily consistent with one's legal residence or where they vote. I don't know how good the military is at policing that particular thing, but I wouldn't, myself, want to count on it as the marker of what recreates a usual residence.

With respect to U.S. military living stateside now, we do conduct a standard enumeration. They are asked all of the same questions asked of the civilian population that are included in all the detailed accounts and characteristics we tabulate in the census.

That is, we would be very hesitant to move the stateside military to an administrative count, only because, after all, they are living in the United States. We would like all the kinds of standard demographics and characteristics we can for them. So, to enumerate their home of record at this stage would either require—as Mr. Ryan pointed out—matching our forms with the Department of Defense to make sure we had an accurate home of record recording,

or we would have to redesign our form to allow us to get them to record what they judge to be their home of record, raising all the questions that Mr. Davis has already brought to the table.

When do they make decisions about whether they want to be in Pensacola, back in Wisconsin and so forth? And I would just suggest, without making a speech yet again, it is very late in the census cycle to try to change those kinds of procedures and not run the risk of introducing errors into the census. Just as we sit here today, Mr. Chairman, Mr. Davis, Mr. Ryan, there are 80 semitrailer trucks on the roads today delivering 136 million census forms, which is only a portion of the census forms, to our redistribution center in Jeffersonville.

As we think of the census starting on April 1, the census has started. We are now doing the things that make this census work, and we are very hesitant to change fundamental rules of residence procedures or change procedures of how we count the Americans overseas at this stage in the decennial cycle.

Thank you, sir.

[The prepared statement of Mr. Prewitt follows:]

PREPARED STATEMENT OF
KENNETH PREWITT
DIRECTOR, U.S. BUREAU OF THE CENSUS
Before the Subcommittee on the Census
Committee on Government Reform
U.S. House of Representatives
June 9, 1999

Mr. Chairman, Mrs. Maloney, and Members of the Subcommittee:

Thank you for the opportunity to testify today on the treatment in Census 2000 of private Americans living overseas, prisoners incarcerated outside of the state that is paying for their incarceration, and U.S. military personnel living outside their home state.

I want to emphasize at the outset that these are difficult issues and I appreciate the reasons they have been raised. As the American economy becomes more globalized and as technological advances, such as the Internet, shrink the globe, more and more Americans are living overseas and more may do so in the future. Both the issue of prisoners and the issue of active duty military living outside their home state raises a different set of important issues related to census residence concepts.

Each of these issues, however, is highly complex as I will illustrate shortly. They deserve thorough study. One complexity, for example, would be to determine whether inclusion of an American overseas would be related to the intent of that person to ever return to this country. The same applies if the Congress wants to reexamine the "usual residence" concept with regard to prisoners or U.S. military personnel outside their home state. We need to make sure that any policy changes are consistent with the original intent of the census to determine the "whole number of persons in each state" for purposes of apportionment. If the Congress believes that all private Americans overseas should be included in the decennial census then it may first want to commission in-depth studies that would shed light on the complexities involved in making such a

change. If funding were available, the Census Bureau would be happy to contract for such studies.

As I have stated before, at present "Time" is our biggest issue. We are past the point in the Census 2000 planning cycle when all major operational plans have had to be finalized. Efforts at this late stage to introduce complex new procedures to the design will place Census 2000 at risk. The operational machinery that constitutes a census is not something to be taken lightly. We could not now re-start the excruciatingly detailed Master Activity Schedule work and meet deadlines for critical steps between now and April 1, 2000. Census 2000 is in its count-down phase where each day matters.

Americans Overseas

Now, let me address the issue of Americans overseas. We understand that there is proposed legislation that merely expresses the "sense of the Congress" regarding counting Americans abroad. It is, nevertheless, important to point out our general concerns about any mandate to count U.S. citizens abroad. At this stage in the census process, there is not time to design and develop the required procedures for conducting this enumeration.

Census Bureau staff met with representatives of the Census 2000 Coalition on this population in early May to discuss their reactions to our concerns and their proposals for overcoming those concerns. After carefully reviewing the Coalition's proposals and studying the viability of all the technical aspects involved, the Census Bureau has concluded that it cannot credibly enumerate the population of American citizens living abroad. There are difficult conceptual issues such as whether to count retirees and other persons unlikely to return to the U.S. We have serious concerns about our inability to validate responses and the operational complexity of such a worldwide enumeration. Because of our concerns regarding our inability to undertake this task in a responsible manner, we are concerned about inviting litigation to challenge any procedures we may be directed to adopt. As I mention later in my testimony, we do plan to count overseas military and Federal employees and their dependents in Census 2000, as we did in 1990, but for this population, we have reasonable procedures in place.

Accuracy

First, we have concerns regarding the accuracy of the information that we would obtain under any attempt to enumerate private Americans overseas. We cannot estimate accurately the size of the universe of this population and so we do not have the means of controlling and checking its progress as we do here at home, where we use the Master Address File to control the enumeration. For example, embassy/consulate lists of American citizens living in their jurisdictions generally are outdated and incomplete, since there is no requirement that citizens register with them upon entering or leaving the country. We also could not conduct an Accuracy and Coverage Evaluation to ascertain undercounts and overcounts.

Without a control mechanism that would allow followup of nonrespondents, the enumeration of the overseas component would essentially be voluntary. Only those persons who knew about the enumeration and wished to participate would be included. A voluntary count could be affected to benefit specific states with concerted publicity campaigns. This outcome would be dramatically different from the mandatory nature of the census here where we have the ability to make several attempts, including telephone calls and personal visits, to include everyone. The result of an inaccurate enumeration of the private overseas American population could distort the population of each state, potentially affecting the apportionment of Congressional seats.

Validation and Verification

Second, we have concerns about detecting and correcting any invalid responses. The problems include ensuring that the Bureau receives valid information for each overseas person reported on the form, problems clearly defining the universe for this enumeration, and problems defining what questions we could ask for validation purposes.

Identifying reports for these persons with potentially duplicative reports from administrative records that we will obtain for U.S. military and Federal civilian employees and their dependents abroad would be very difficult. To unduplicate, we would also have to get SSNs for the Federally affiliated employees overseas and their dependents. We have no means to collect SSN or any information for individuals in the Federally affiliated component of the overseas population; we obtain only counts by home state from the administrative reports of Federal agencies.

There is no practical way to verify either the U.S. citizenship or the home state designation for each person counted through this voluntary, uncontrolled type of enumeration. Requesting passport number or SSN will not solve this problem because many American citizens overseas do not necessarily have passports, for example, if they live in countries like Canada where they do not need passports. Many may not have an SSN, particularly dependents. The issue of dependents raises another issue related to citizenship. Should only U.S. citizens be included in the universe or should all spouses and children be included regardless of citizenship? The fact is, the Americans overseas population is very complex and I do not believe anyone has made a thorough study to identify and examine all of the problems and concerns associated with counting this population.

There is the separate issue of determining the home state for overseas individuals. Would it be the last state they lived in before moving overseas, the state which they claim for income tax purposes, the state in which they vote, or their state of birth?

Operational Complexity

Third, even if issues of accuracy, validation, and verification could be resolved, it would be much more operationally complex to include all overseas American citizens in the Census 2000

count than may appear at first glance. Processing of results from this enumeration would require matching of files, development of procedures for resolving matching problems, and deciding how to handle unmatched cases.

Development efforts would require considerable lead times for planning, developing, and conducting operations and establishing the network of partnerships recommended by the coalition. After determining the design and content of the overseas form, we would have to obtain clearance for the form and then we would need to prepare and advertise for bids and award printing contracts.

To make an earnest and effective attempt to reach this population, the Census Bureau would need to obtain the commitment of considerable staff support from the State Department. The State Department would have to provide address lists of embassies and consulates by country worldwide, along with current estimates of the number of American citizens living in each embassy/consular jurisdiction. The State Department would be the primary agent for much of the logistics associated with overseas publicity of the enumeration at the embassies/consulates, along with the distribution of the bulk of the census forms. If the overseas form asked for passport numbers, the State Department would have to match a file of passports on the overseas forms with their official passport files. We would have to swear in State Department employees in embassies all over the world, providing them with special sworn status to address legal confidentiality concerns. All this work would entail a substantial amount of negotiation, planning, and coordination between the two agencies. This means time.

Cost

The cost of such an enumeration, were we required to design it, would likely be significant and we could not conduct it within the existing budget request. At the outset, the Congress would need to appropriate substantial additional funds (including FY99 preparatory activities) to carry out this overseas enumeration.

Even with all the assistance that the Census 2000 Coalition has generously offered, we would need additional staff to effectively coordinate and implement this work. Other costs would include printing forms and shipping of materials to and from many countries, as well as controlling and capturing the information on the returned forms.

Even if the census clock allowed us to consider adding this operation, which it does not, we must conclude that to take a census of private American citizens abroad at this time would be costly, of dubious quality given the conceptual complexities and operational difficulties, and result in incomplete, unreliable data. I hope I have adequately described some of the complex issues that would require thorough empirical research before we could undertake such a task.

Prisoners

Now, I will discuss H.R. 1632, which relates to how we should count prisoners in Census 2000. H.R. 1632 would require that, if an individual is incarcerated in a state and the state can recover from another state or states over half the costs for incarcerating the individual, then the Secretary of Commerce shall count the person in the state from which costs are recoverable. In the event that costs are recoverable from two or more states, the Secretary of Commerce shall prescribe rules consistent with carrying out the Act. The Census Bureau has serious concerns with this bill.

In Census 2000, the Census Bureau plans to count prisoners and other institutionalized populations as residents of the state in which the institution or facility is located.

This procedure is in keeping with the usual residence concept the Census Bureau uses to decide where to count people in the census. The concept of "usual residence," a principle used by the Congress in the first Census Act of 1790, is defined as the place where the person lives and sleeps most of the time. Usual residence is not necessarily the same as the person's legal residence. The usual residence concept was approved by a U.S. Court of Appeals in 1971 in *Borough of Bethel Park v. Slans*, 449 F. 2d 575 (3rd Cir. 1971). The Court found that counting inmates of institutions as residents of the state where they were confined was a reasonable means of interpreting the constitutional and legislative phrase, "whole number of persons in each state." In a 1992 decision, the District Court for the District of Columbia ruled that the decision to count inmates at a prison located in Virginia, but operated by the District of Columbia, as Virginia residents rather than D.C. residents, was not arbitrary or capricious. *District of Columbia v. U.S. Department of Commerce*, 789 F. Supp. 1179, (D.D.C. 1992).

This legislation, if passed, would mandate an exception to the judicially-approved usual residence concept. Doing so may open a Pandora's box of pressures for other exceptions to our residence rules. For example, there may be an interest in having prisoners incarcerated within a state counted at their pre-incarceration residence in that state. Once we begin to violate the concept of usual residence, there are many other permutations that could confound the process.

There are other examples where one state funds its citizens' activities in another state. North Dakota provides funding for students to live and participate in programs at universities in other states. In Illinois, the state government and local school districts provide funding for services that disabled students receive out of state. Nevada, in some cases, provides funding for its residents to receive Medicaid services out of state, which in some cases involves their living out of state. Maine pays for out-of-state residential care and mental health treatment when treatment is not available in the state. West Virginia pays to house students who need special education or other special care in other states. As you can see, changing the residence rules with regard to prisoners would raise a whole rash of questions about whether other categories of people should be counted at their usual residence.

Census residence rules are carefully designed and integrated to make sure everyone is counted and to avoid counting anyone twice. Implementing new rules at this late date, without proper testing and evaluation, would run the risk of introducing errors into the census process. Consider the complexity of the issues raised by the bill:

First, the bill is not clear about whether prisoners would have to be allocated to a specific location within a state. If not, they would not be reflected in the totals below the state level; in essence, they would not have an impact on redistricting or funds allocation for any locality. If they do have to be counted in a specific location, what location should it be? Should it be their home at the time they committed the crime they are incarcerated for, or at a correctional facility in the jurisdiction where the crime was committed? Attempting to assign these people to an address within another state would be extremely complicated.

Second, the Census Bureau would have to design a new form for collecting sufficient information to allocate a prisoner to another address in another state. And we would have to devise new procedures to assure proper distribution of long form questionnaires to a sample of prisoners.

Third, having to determine which prisoners are funded by another state would require developing new procedures to work with prison administrators on a case-by-case basis. Doing so would involve significant retraining of census enumerators and we would still have no way of knowing whether they could make these determinations. Without proper testing and evaluation, we cannot know whether prison officials have good records that would show which prisoners are funded at the 50-percent level by another state or whether this information is even recorded. For example, a contract between states may indicate that one state has to pay another a certain amount for care for a prisoner but may not indicate the total cost of custodial care. How then does one decide if it's 50 percent?

Fourth, the bill is not clear on whether it is only state-supported prisoners and state-run correctional facilities that would be included, or whether prisoners and facilities at the local level, as well as privately run prisons, would be included. Notably, the bill makes no reference to Federal prisoners who are more likely to be incarcerated outside their home state.

These are just some of the complex issues raised by this bill. Again I emphasize that there is not enough time to consider additional operations related to prisoners, which would be untested and not carefully integrated into the current Census 2000 operational plan.

U.S. Military Stationed Outside Their Home State

Now I will discuss proposed legislation that would require that members of the armed forces on active duty and their dependents be allocated to their home of record. We have had very little time to study the legislation or to analyze its impact, so I will present only a brief description today and would be happy to provide a more detailed analysis later.

Let me begin by describing our plans for counting active duty military in the United States. Members of the U.S. armed forces who on Census Day are living on a military installation in the United States or living on a military vessel assigned to a home port in the United States are counted at the military installation or at the home port of the vessel. Members of the armed forces stationed on a nearby military installation or ship in the United States who live in off-base housing are counted at the off-base residence. This is consistent with the long-standing principle of usual residence that I described above with regard to prisoners.

We do count U.S. military and their dependents assigned overseas (as well as Federal civilian employees and their dependents) at their home of record or other home state designation as determined by using agency administrative records. We do not conduct an individual count of this population.

As with H.R. 1632, we have serious concerns with this legislation because it would mandate an exception to the usual residence concept for the U.S.-based military and potentially lead to other challenges to the usual residence concept, as I have described above.

For the U.S.-based military, we conduct a standard enumeration. They are asked all the same questions asked of the civilian population and they are included in all the detailed counts and characteristics we tabulate in the census. To enumerate them at their "home of record" would require us to design a new operation late in the process. Many armed forces members may not know their home of record; if we had to match completed census forms for armed forces members to Defense Department administrative records, that would require a massive, costly, and time-consuming operation that we could not undertake without putting the census at risk. If "home of record" means place of birth, this could lead to the incongruous result where a person is born in one state but owns a home and uses the resources of another. There is simply no time or justification to make this kind of significant change to the census residence rules and to census operations.

Mr. Chairman, that concludes my testimony. I will be happy to answer any questions.

Mr. MILLER. Thank you, Dr. Prewitt. Let me ask you a couple of questions about U.S. citizens overseas. Again, we're under the 5-minute rule ourselves here. It is a problem that obviously has been around for a while, and I know you and the other people at the Bureau have met with the representatives of the different organizations. I know I have and I know my staff has. I think we philosophically agree they need to be counted because, as they point out, we count illegal aliens in the United States; we count convicted felons serving time in prison; but Americans overseas don't get counted.

I have a very legitimate argument. My impression is their motivation is being good citizens. They feel it is a right just like voting is a right. So, the question is, what do we do about it?

Could you enlighten me a little bit on the history of this issue at the Bureau? Obviously before your time, but have we tried to do it in the past?

Mr. PREWITT. Yes, sir, we tried in 1960 and 1970, particularly in 1970. We were so disappointed with the count that we chose not to introduce it into the apportionment counts. We were afraid it would introduce more distortion than not. We made a count. We reported the count. We can find tabulations of American overseas living abroad in 1970, and we were unable to certify it to the level with which we felt comfortable bringing it to the apportionment counts.

We made a serious effort. We contacted the same kinds of groups represented here: chambers of commerces, embassies, churches which have missionary programs abroad, corporations, and so forth. And at the end of the day, we felt like we had not done an adequate job.

Could we do a better job in 2000? I would hope so. Could we do an even better job in 2010? If we started with some better sense of what the base population looks like and how they are distributed and what the quality of the administrative records are at universities who send many, many scientists abroad, churches who send many, many missionaries abroad and corporations who send many, many employees abroad and the retiree population who simply lives abroad and does not intend to come back. We simply need a map of that phenomena before we would be comfortable doing the level of job which we could come back and recommend to the Congress that it become a part of the apportionment counts. Yes, we had a bit of experience; but it was not a very happy experience.

Mr. MILLER. For the past several years gearing up for the 2000 census, I am sure you have had people studying the issue and trying to figure out how to do it. Any ideas or possibilities how it could be done? I am impressed with what this group has proposed. I agree with you. We want to make sure that is not circulated as an official form, but the fact they drafted their own form indicates a real commitment and interest.

Mr. PREWITT. I appreciate it. With you, sir, I don't dispute the motivation or the legitimacy of the concern. I do remind you that the U.S. Constitution requires us to count all residents of the United States. That is why we count illegal aliens and felons. We are being consistent with the U.S. Constitution. The U.S. Constitution, of course, is silent on counting non-resident citizens. So even

though this is a good faith effort, it is complicated, because we have made the decision to count U.S. military and Federal employees overseas.

The policy that guides that decision is that we have every reason to presume that this is a temporary assignment overseas, and that they are coming back. The groups concerned about overseas Americans have brought to our attention that they do have large numbers of Americans who do not intend to come back but still have a right to be counted.

I think that is an understandable statement on their part, but it is a fundamental change in policy. I would urge the Congress not to make that change in policy without having a better sense of the dimensions of that issue.

Mr. MILLER. The State Department estimates 3 million abroad. We don't know what the number is whether it is 5 million or 10 million. Your point of view is a voluntary overseas census that may only get a 30 percent response is worse than zero?

Mr. PREWITT. Well, it is for apportionment purposes. Unless you make the assumption that the volunteers and the non-volunteers are distributed across the States proportionate to the true count—Mr. Miller, you have taught this. You know that self-selected samples—we are talking about a sample, right, a self-select sample, a volunteer sample is a biased sample.

It goes back to my illustration. If we ended up undercounting, disproportionately, Canadians and overcounting, disproportionately, Americans living in Mexico, then unless the people living in Canada and Mexico came equally from the same States, we would have penalized and rewarded States differently.

So my concern is, yes, that a 1 out of 3 introduces air into the apportionment count, unless we make a statistical assumption that the people who are not counted are distributed across the State of record exactly the way the people who are counted. Otherwise, you are allowing volunteers to determine an apportionment count which is inconsistent with the fundamental policies that govern the Census Bureau.

Mr. MILLER. We will hopefully have a second round. Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman. Dr. Prewitt, you have talked about the discrepancy between projections. Some people say there may be 3 million. Somebody else may say 10 million Americans living abroad. How do they make these projections? And if there is that much discrepancy, could there be any reliability at all?

Mr. PREWITT. Well, Mr. Davis, I will let you ask the next panel. I am quoting from their own newsletter and one of the witnesses is the one who's introduced the number of 5 to 6 million. Their newsletter introduced the number of 10 million. I don't know where those numbers come from. The number of 3 million is, as I understand it, a State Department estimate based mainly on embassy and consulate records.

I simply know too many Americans living abroad who have no relationship with the local embassy. They have no reason to. They've been retired in southern France. They've been working in Canada for so many years that they simply don't even manage to

maintain their passports. They think of themselves as permanently living abroad.

They may still even want to vote for whatever reason, but they don't necessarily maintain a close connection with their embassy. The State Department estimate is the only one I know that exists, and I have no reason to presume that it is very accurate. So, a very wide variation.

Mr. DAVIS. So when we got beyond the State Department, I mean, they've got something to go on seemingly.

Mr. PREWITT. Right.

Mr. DAVIS. Then we just don't have any idea of where the others really come from; and if we did, we probably wouldn't have much possibility of finding those people anyway, would we?

Mr. PREWITT. Mr. Davis, I dislike talking about the census by anecdote because I get too many anecdotes, and the census is about systematic information. But I could give you anecdote after anecdote after anecdote of Americans I know living abroad who I know the Census Bureau could not find.

What proportion that is, I don't know, but I do know right now, unless we did some pretty systematic work, there are large numbers of Americans—I asked my friends in statistics about Canada the other day. I said could you help us count the Americans living up there. They said, yes, if they are employed, because we could use our work permit system; but if they are unemployed—they are just retired—we don't have any idea whatsoever.

That is an interesting revelation because it is much easier to get import data than export data. That is true for trade data, as well as people data, because States have a reason to sort of want to know who's coming into their country. They have less of a need to know who's leaving their country. So even Canada, which has very good import data, could not tell me how many Americans were living up there unless they were employed and, therefore, had work permits.

Mr. DAVIS. When you get through with the census, do you expect to have any money left?

Mr. PREWITT. That's a serious question, Mr. Davis. Let me answer it seriously. If the budget that we have now presented to Congress is passed—which we have our fingers crossed—and if the response rate is higher than our estimated 61 percent; and we are getting increasingly enthusiastic about the power of our partnership program, our promotional program, our advertising program, all of which are on track, we may get that response rate above 61 percent. If it gets very far above 61 percent, the census in 2000 will cost less money than we are now projecting, yes, sir.

Mr. DAVIS. So, I guess my point is, if we went to some of the extraneous logistical difficulty of trying to count the individuals now that we are talking about, trying to find them and also dealing with the individuals in the military, we probably would have to appropriate or even authorize some more money in order to—

Mr. PREWITT. We could not afford to spend 2000 money on an additional procedure. All of the 2000 money is very, very tightly connected to the current procedures that we have recommended to the Congress that we use. If we were to do a big study of this problem in say, 2002, 2003, an investigation of how well we could do it, I

can't sit here today and say there would not be resources left over from 2000 to do that study.

If not, we would obviously have to come back to the Congress and ask for an appropriation to do it. But certainly to do it in 2000, this simply is not budgeted. It is not even budgeted in 1999. So we clearly would have to be coming back immediately in 1999 for a supplemental.

Mr. DAVIS. Thank you very much.

Mr. MILLER. Mr. Ryan.

Mr. RYAN. I want to thank you for coming today, Mr. Prewitt. It is nice to hear from you. I would like to ask you some historical questions with respect to the military on their counting. Prior to the 1990 census, how were overseas military personnel counted?

Mr. PREWITT. Help.

Do you have reason to know that we did not count them prior—we counted many—

Mr. RYAN. Your methodology is what I was concerned with.

Mr. PREWITT. It was administrative record methodology, supplemented with a survey on home of record. Is that what you are getting at?

Mr. RYAN. Right, but home of record was introduced 6 months prior to the 1990 census; is that correct?

Mr. PREWITT. The survey to do home of record, yes.

Mr. RYAN. So in 1990, 6 months prior to the census, they introduced the home-of-record methodology and the Census Bureau with the Defense Department put together a partnership to share those administrative records to then do so on the home of record.

Mr. PREWITT. Correct.

Mr. RYAN. So, the usual residence concept for military personnel was changed by 1996 much prior to the—

Mr. PREWITT. The usual residence, I don't think, was changed. What we did was get better data.

Mr. RYAN. You used home-of-record data. You were planning on doing the same kind of partnership with the Department of Defense with respect to these overseas personnel, correct?

Mr. PREWITT. With one new change. They are now making us pay for it, but yes, sir.

Mr. RYAN. You have been appropriated that, right?

Mr. PREWITT. Right.

Mr. RYAN. In your testimony, you said with respect to activity of military personnel overseas, that you have reasonably good and accurate ways of allocating them back to their home of record dated 10 years ago, doing it again with more precise methodology. Doesn't that same concept hold for those who are stationed here at home?

Mr. PREWITT. I think you are absolutely right, Congressman. With just two qualifications, if I could. One, I cannot tell from your bill whether you would expect home of record to be geocoded down to the block level for redistricting purposes or—

Mr. RYAN. Let's use it for the argument, for the sake of apportionment.

Mr. PREWITT. That would be the first qualification. That helps a lot. That makes the task much, much more easy than coding back to some local address.

Mr. RYAN. Let me limit it, for purposes of apportionment. You are already doing that. You have already got the partnership with the Defense Department. You are doing it with overseas personnel. You didn't decide, but in 1990, they decided 6 months prior to the census. And I realize you have a timeline; trucks are already leaving. But we are able to accomplish this kind of change with overseas personnel 6 months prior to the 1990 census. It seems fitting that we could accomplish this at this point in time, with respect to extending it to domestic stateside military personnel.

Mr. PREWITT. I understand your question, Mr. Ryan.

I think the big, big, big difference, however, in 1990 with respect to that population group and in 2000, with respect to the population group you are concerned about, is the population group in 1990 starts out as an administrative record count, which we then supplement so we are dealing with the people who manage the administrative records.

The population that you are concerned about, that is, the domestically residing military, we start out as an enumeration census, not an administrative census. Therefore, it would require a fundamental and big time change in our procedures quite different from what 1990 did; 1990 was a supplemental of an administrative record. This is taking an enumeration census and somehow coordinating it to an administrative record census. Could we work on getting those procedures in place? We would certainly work on it if this legislation passed. It is a different phenomena than 1990.

Mr. RYAN. It certainly seems like you could, because you already have the partnership with the Defense Department. You already have the administrative records available.

Mr. PREWITT. But we don't for that population group. It's a different partnership.

Mr. RYAN. In 1991, the Census Bureau determined that the home-of-record data was more accurate for military personnel than the legal residence definition or last duty station because legal residence was done largely for tax purposes. Last duty station is even more imprecise because it could have been a very, very short duration. Why are you using home-of-record data? Isn't it because of those reasons that home of record seems to be a preferable definition for overseas personnel with respect to legal residence or last duty station?

Mr. PREWITT. Correct.

Mr. RYAN. Why is that inconsistent to then extend that definition to stateside personnel?

Mr. PREWITT. Because with stateside personnel, we have a real residence. We have where they are living and sleeping and therefore——

Mr. RYAN. They are living and sleeping in Germany and other places.

Mr. PREWITT. No, no, no. That is very, very different. We don't have apportionment rules or districting rules governing living and sleeping in Germany. We do have apportionment rules governing living and sleeping in Pensacola or Fort Bragg. We have a usual residence rule that for the domestically sided military does place them into the official counts that this country uses for apportionment purposes, and it is where they are living and sleeping. It is

fundamentally different to sort of translate the overseas military into the domestic situation.

Mr. RYAN. So, for the purposes of apportionment, it seems relatively easy, but so you are saying for the purposes of—

Mr. PREWITT. It is easier.

Mr. RYAN. More difficult and challenging for redistricting and funding reasons, but the question probably then comes down to is it easy? Probably not. Is it doable?

Well, I would contend that it is doable, simply because you have the partnership with the Defense Department; records are available. Yes, it may take some more work, but at the end, isn't the most accurate enumeration our true goal here?

Mr. PREWITT. Yes, sir. We have defined most accurate enumeration, as when possible, using our usual residence rules, which we do use for every other purpose other than the overseas military—

Mr. RYAN. Which were modified with respect to military personnel in 1990.

Mr. PREWITT. No, we used usual residence. Home of record was our definition of usual residence. We didn't modify. We simply got a better record of that than we could get from the administrative records. We didn't modify the rule. I think I am correct on that.

Mr. RYAN. You adopted home of record as the basis for usual residence.

Mr. PREWITT. Yes.

Mr. RYAN. I see that my time has run out.

Mr. MILLER. Mrs. Maloney.

Mrs. MALONEY. Thank you. Dr. Prewitt, I have a draft bill. I don't know if you have had a chance to look at it but basically it calls upon the Bureau to do a special survey of American citizens overseas and have this survey done by, say, 2003, not connected with the 2000 decennial census. And I would like you to read it and get back to us. But could you give us some comments on whether you think this special survey could be used to help make decisions about the 2010 census? What are your thoughts basically, not only on the survey, but in general, on counting Americans overseas, and how we should do that?

Mr. PREWITT. Mrs. Maloney, I do appreciate that legislative initiative. I have had a chance to quickly review it, and I appreciate the intelligence with which it is constructed. What it first asked us to do is to consult with the witness panel and the representatives here about the complexities of this, beyond what we have done.

And second, present to the Congress a feasibility, if you will, a statement report within a year of initiation of this consultation process. And on the basis of that feasibility statement, then say how we would actually go out and conduct the count itself so Congress would have an opportunity to itself decide whether it was as feasible and cost effective as it could be. The Census Bureau would be delighted to cooperate with the Congress in that initiative.

I think as Congressman Miller said at the outset, and as I am sure we will hear from our distinguished panel in a moment, it is a new world. The next century is going to have many, many more Americans living abroad in many, many complicated ways. And what that means for our traditional concept of what the census is supposed to do has to be addressed as a major policy question. And

we are very responsive to working with the Congress to address that policy question.

I do not think that policy question has been adequately addressed. I think that you, the U.S. Congress, would have to decide whether it made sense to count for apportionment purposes people who never intended to come back to the United States. It is a policy question and many others are similar.

Mrs. MALONEY. One of the recommendations by the groups representing Americans overseas is to create a self-reporting form which American citizens could pick up at embassies. If there is self-reporting, I have a concern that some States may start a lobbying effort in an attempt to get the overseas population to self-identify with their particular States, and can you comment on that concern?

Mr. PREWITT. Well, I can say the following: With or without a lobbying effort, there is every reason to presume that the responses from a voluntary self-enumeration census, where we would have no opportunity to go back and try to find the people who do not volunteer, that that response pattern would be some sort of biased pattern with respect to the true distribution by State of record of the overseas Americans.

There is simply no reason to presume that the volunteer part of the population will resemble, in terms of State of record, exactly what the total population looks like. So, by definition, we would be introducing distortions into the apportionment count.

If somebody can convince me to the contrary that we will count that volunteer part of the population exactly proportionate to what the total population's characteristics are, with respect to State of record, we could be convinced. But since people don't even know what the universe size is, it is very hard for me to imagine they could make a compelling case.

Mrs. MALONEY. Very last, because I know our time is running out. I know we have a number of important resolutions and bills before us today, but I would like to ask you, how are the preparations coming for the decennial census?

Mr. PREWITT. Well, I'd love that opportunity. If I could just slightly edit your question, it is not only preparations, it is real implementation of procedures. I am delighted to report to the oversight committee that we have completed our block canvassing on schedule and we are now back out in the community making some corrections to our address file and that procedure is going very, very well.

We have opened up all but three of our local offices or signed leases for all but three. That is 517 out of 520. We are very pleased with that. As I mentioned when you were out of the room, Mrs. Maloney, there are today 80 semitrailer trucks on the roads on their way to Jeffersonville with a very large percentage, but not all, of our short form questionnaires. Many of our printing contracts have been released. We have over 6,000 complete count committees now up and running. We have over 400 partnership experts recruited. We have signed agreements with 450 tribal governments, and so our creative work with our advertising campaign is on schedule.

We have tested over 1,000, we are already casting and wardrobing for 100, creative presentations for medium print and so

forth. Right now, I must say, despite all the complexities and difficulties getting to this point, for early June, we think our operations and procedures are on schedule to have a successful census in 2001. We are very reluctant to create any kind of major disturbances to that procedure at this stage, for the reasons that we have talked about so often in this committee.

Mr. MILLER. We have a vote, but we have a few minutes, so if anybody wants to go back for a single question or such. I know I have a question or statement. And we will break for our vote, and we will come back for the next panel.

I think we have to come up with a way to count overseas U.S. citizens. A lot of the decisions that have been made for the 2000 census were made obviously before your tenure at the Census Bureau; and maybe, with the recommendation of Mrs. Maloney, we'll lay the groundwork for what we want to do for 2010.

We just need to start off with the assumption we are going to count U.S. citizens overseas. We may have to have different standards that we apply to counting overseas. It is going to be hard to get that finite population. You are the experts on how we do that. Maybe we have to lower our standards.

I see your concern about a voluntary type response. But these are U.S. citizens. They vote and they pay taxes, a lot of them. So, they have every right to be counted. It doesn't affect redistricting, as we know. It would only affect the issue of apportionment.

Since we count military and other Federal employees because of administrative records, we need to find a way we can do it certainly for 2010; and we need to have a plan of some sort. We need to get through next April 1, I recognize, and determine whether there is anything we can do between now and April 1 to help. Explain to me, again, a voluntary response. I know you have to verify but if you have passports, you know, they scan your passports and all that. It seems like a computer system with the State Department would be capable.

Why is getting 30 percent of the people counted through embassies worse than zero percent?

Mr. PREWITT. Mr. Miller, if the 30 percent are distributed somehow across the 50 States, which they would be, of course, since we are recording them back. The whole motivation of this, as I understand it, is to use this count to get back to the apportionment numbers. If the 30 percent are distributed across the States proportionate to whatever, the number of overseas residents that happen to come from California, Florida, New York, or what have you, if the remaining 70 percent had a different proportion across those 50 States, then you are simply introducing bias; and there is no way to measure the magnitude of that bias.

So, we would have to presume that volunteers come from State of record in exactly the same ratios as non-volunteers come from the State of record. Otherwise, we introduce a distortion. But I am really sympathetic with the thrust of your question. I am more than happy to have conversations with this Congress about whether we should create a different position with respect to the overseas Americans and have that policy discussion.

It would be very difficult to introduce a whole new policy into the 2000 census. Perhaps, Congressman Miller, we would be sitting

here in a year or two, talking about using sampling for non-response followup with the overseas Americans. That may be the procedure we would have to come back in and recommend.

Mr. MILLER. Thank you for bringing that issue up. We will have to get the Supreme Court to rule on that one.

Mrs. Maloney, do you have a quick question?

Mrs. MALONEY. What about exiled Americans? A lot of Americans are patriotic citizens who are overseas for their jobs or education or whatever. But there are some people who prefer to be exiles, who don't participate; how would we treat them? Would we treat them differently?

Mr. PREWITT. We would have to, and we also have the issue of dependents who are not American citizens but are married to or children of American citizens. Do we count them as part of this count? We have dependents who might want to become American citizens but are not yet American citizens.

So, there are all of those issues. The problem with the U.S. Constitution, it says count residents. As soon as we leave the borders, we get into a situation where we are now only trying to count citizens. So we changed the rules, as I understand it, but it gets very murky. Exactly, what is a citizen? Somebody who has let their passport lapse? Americans overseas have let their passports lapse. Do we try to find them or not find them?

So, the conception of this population is work that has to be done. This is the kind of work we will be allotted to do if your legislation is passed.

Mrs. MALONEY. But, you would support the legislation?

Mr. PREWITT. Yes, ma'am.

Mrs. MALONEY. Thank you.

Mr. MILLER. Does anyone have a quick question?

Mr. DAVIS. I just have one question. I just want to make sure, if I could, Dr. Prewitt, that I am interpreting your testimony correctly. And that is, it seems to me that you are saying that these are serious issues. They are issues that need to be looked at, but that we are too far along in the process to really talk about changing anything without causing a tremendous amount of disruption.

Mr. PREWITT. Yes, sir, that is correct.

In neither of these instances does the Bureau itself have a principled opposition, but it is a concern that it is not a good moment to try to change major procedures. It might come up with a principled opposition after further reflection and discussion with Congress; but as of now, we would want the time to think through all the implications.

For example, Mr. Ryan's legislation we have only had for a couple of days. We have to think through the implications of that. So I don't want to foreclose the possibility of a principle—a concern, but as of now, that is not the motivation. The motivation is what can be done realistically and intelligently in the timeframe that is available.

Mr. DAVIS. Thank you.

Mr. MILLER. Thank you very much, Dr. Prewitt. Some of us may want to submit some written questions, and we would appreciate your response on that. I think we need to start off with a strong commitment, and in 2010 we will figure out a way to accomplish

the job. I am disappointed the Bureau, back in the early 1990's, didn't really come up with a more concrete solution to the problem, and I recognize the problem of timing right now. I look forward to our next panel, talking about it very specifically.

Thank you very much for being with us today.

[Recess.]

Mr. MILLER. If we could have the next panel come forward, please, and remain standing.

[Witnesses sworn.]

Mr. MILLER. Let the record show all answered in the affirmative.

Welcome. Thank you for sitting through the first part of the hearing. I hope you found it of interest to hear the comments from Director Prewitt. I am interested to hear him come after you, too, but it is the procedure we are following.

Let me welcome all of you here. We will proceed, and the other Members will be returning. There will be no more votes for the next little while, so we won't be interrupted again, and I apologize for the delay.

We will try to hold to the 5-minute rule. Let me at this stage proceed with Mr. David Hamod.

STATEMENTS OF DAVID HAMOD, EXECUTIVE DIRECTOR, CENSUS 2000 COALITION; DON JOHNSON, VICE PRESIDENT, ASSOCIATION OF AMERICANS RESIDENT OVERSEAS; L. LEIGH GRIBBLE, SECRETARY, AMERICAN BUSINESS COUNCIL OF GULF COUNTRIES, AND EXECUTIVE COMMITTEE MEMBER, REPUBLICANS ABROAD; DOROTHY VAN SCHOONEVELD, EXECUTIVE DIRECTOR, AMERICAN CITIZENS ABROAD; AND JOSEPH SMALLHOOVER, CHAIR, DEMOCRATS ABROAD

Mr. HAMOD. Thank you, Mr. Chairman. Thanks to Mrs. Maloney, in absentia, for the opportunity to testify today and for holding this useful hearing.

My name is David Hamod. I am the executive director of the Census 2000 Coalition, an ad hoc bipartisan group dedicated to including all Americans overseas in census 2000. Our C2K coalition is composed of all the major organizations representing U.S. citizens and U.S. companies overseas.

Mr. Chairman, before I go to my prepared remarks, let me just share with you some personal perspectives. I do these now as an individual, not on behalf of the coalition.

It saddens me deeply to have the Census Bureau turn its back on millions of Americans overseas who, in our opinion, deserve to be counted. I hear the Census Bureau saying they don't fit our statistical models so they should be ignored. I hear the Census Bureau saying this is the way we have always done it. We are not going to change.

I want to reaffirm that this is not a nameless and faceless case study. We are talking about people's lives here, and I guess I am a little bit ashamed that the Census Bureau has so cavalierly dismissed millions of Americans overseas, particularly when they work so hard to track down every American here in the States.

It suggests to me that the Bureau is completely out of touch with this very important segment of the U.S. population, and I guess I have to say, it seems to me also that the Census Bureau may be

neglecting the very people that they were created to serve, that is, the American people. Those are some personal comments and now I will go on with my prepared statement, Mr. Chairman.

It may come as a shock to the subcommittee that no one knows how many Americans live and work overseas. The population of private Americans abroad may be as small as the greater metropolitan area of Sarasota, Bradenton, Tampa, St. Petersburg, and Clearwater, about 3 million; or it may be as large as, say, New York City.

The truth is, without the census, we just don't know. But one thing is very clear. If the Census Bureau excluded the residents of western Florida and those of New York City from census 2000, I am confident that there would be a hue and cry from your constituents. They would be outraged that the Census Bureau was treating them as invisible U.S. citizens, ignoring some 3 to 9 million hard-working taxpaying Americans. Does this sound familiar?

Americans living and working overseas are an increasingly important segment of the U.S. population. This is a reflection of America's growing globalization and the essential role that U.S. exports of goods, services, and expertise now play in strengthening our economy. As highly visible Ambassadors of the United States, economically, politically, and culturally, U.S. citizens overseas play a key role in advancing America's interest around the world and have a far greater impact on the United States than at any other time in U.S. history.

With this in mind, it is all the more perplexing to us that the Census Bureau is proposing to exclude private Americans overseas from census 2000. We think they should be included for at least four reasons.

First, competitiveness. In order for America's public and private sector leaders to give appropriate support to U.S. citizens and U.S. companies overseas, it is important to get a better handle on how many Americans live abroad and where they live.

Second, representation. There is no reasonable basis for excluding millions of Americans from census 2000 just because they are living overseas. Like Americans who reside within the 50 United States and the District of Columbia, U.S. citizens abroad vote in the United States, pay U.S. taxes, and generally stay in touch with their home communities in the United States.

Third, fairness. The U.S. Government employees and officially affiliated workers overseas are included in the census. It is wrong for the U.S. Government to take care of its own and to discriminate against those Americans who do not work for the government. We believe that all Americans deserve the right to be counted, and I should point out that the Federal people overseas are no more resident in the United States than the private people overseas.

And fourth, accuracy. The Census Bureau says it wants Census Bureau 2000 to be the most accurate census ever but the Bureau cannot willingly and knowingly exclude millions of Americans living overseas and still claim with any credibility that its work is accurate.

And I was a bit surprised, I have to admit, that the Director of the Census Bureau this morning said that a 100 percent undercount, which is what we have right now, is better than, say,

a 50 percent undercount. Right now, we are not counting any of these private-sector Americans overseas, and I would suggest the real distortion lies in not counting these Americans abroad.

The Census Bureau has expressed concern that it does not have the resources to include all Americans abroad in census 2000. With this in mind, members of the Census 2000 Coalition have volunteered to do the lion's share of the work in getting the word out to private U.S. citizens residing overseas. This is entirely consistent with the Bureau's Census 2000 Partnership Program, and we are hopeful that the Census Bureau will take advantage of our offer to assist.

Again, it was with some disbelief this morning, that I heard the Director say that the master activity schedule cannot be changed in any way and that any modifications from here on out could endanger the very census itself. We find that that strains credibility, and it is our impression that the master activity schedule is quietly and continuously tweaked.

We also see our request not as interfering with the existing census; rather it is an add-on, and our perspective is this should not interfere one iota with the existing census 2000 effort here in the United States.

The C2K coalition is proposing an efficient and relatively inexpensive method of counting private Americans abroad. Our proposal is modeled after the Federal Postcard Application process through which Americans overseas have voted successfully by absentee ballot for more than 2 decades. We see this as a simple five-step process.

Step one, preparation of the overseas citizen census card. The Census Bureau would review the card, modify it, and print the card. Let me say, for the record, we are deeply apologetic to the committee and to the Bureau. We didn't mean to suggest in any way that this was an official document and we will take steps immediately to reinforce the fact that this is only a draft.

Step two, dissemination of the OCCCs. The OCCC would be distributed to Americans abroad through three basic channels: on the Web, directly to overseas American organizations and indirectly through U.S. embassies and consulates. With this in mind, we applaud the Census Bureau's recent decision to post forms on its Website, where they can be downloaded easily from anywhere in the world. For anybody who would suggest that the Census Bureau can't change its ways, this is proof positive that it can.

Step three, submission of the OCCCs. It is envisioned that the OCCCs would be returned to the Census Bureau one of two ways, either directly through the mail or indirectly through the embassies and consulates.

Step four, tallying the OCCCs. Once delivered to the Census Bureau, it is expected that the Bureau would enter the OCCC data in the most efficient manner possible.

And step five, clarification and verification. The OCCC requires Americans abroad to provide their passport numbers, which could be checked against State Department records, if need be.

And I want to emphasize here, that there is a sense, it seems to me, within the Census Bureau that Americans abroad are guilty until proven innocent. We would suggest otherwise. They are inno-

cent until proven guilty, and Americans overseas, in our experience, have been some of the most patriotic, law-abiding Americans you have ever met.

If the Census Bureau has additional questions concerning the OCCC, the C2K coalition suggests following up with staff at the embassies and consulates or contacting overseas Americans directly by e-mail, fax, or telephone. The Census Bureau has expressed some concerns about its ability to enumerate private Americans living and working overseas.

The C2K coalition recognizes that counting overseas Americans may be a challenge for the Census Bureau, but in our assessment, none of the obstacles that the Bureau has raised are insurmountable. And after hearing and reading Dr. Prewitt's testimony this morning, I feel and I think my colleagues feel more strongly about this than ever. We regret that it has taken years, I repeat, years, for the Census Bureau to study seriously the low-cost, common-sense proposals that have been put forward by Americans abroad. As a result of this delay, which regrettably had been on the Census Bureau's side, valuable time and valuable opportunities have been squandered.

The Census Bureau's concerns, as they've been expressed to us, can be divided into six major categories.

Cost. The Census Bureau says that an overseas count will cost too much. The C2K coalition has seen no Bureau estimates of what the cost would be. We are confident that the bill for counting Americans abroad will amount to a fraction of what it costs per capita to count domestic Americans. The U.S. Department of Defense, never known for its frugality, administers the highly successful Federal Voting Assistance Program for under \$3 million per year. Can the Census Bureau get by with less than the Department of Defense? We hope so.

Second, the extent of participation. The Bureau mounts strong efforts to count as many U.S. and non-U.S. citizens as it can, and they should apply this same level of commitment to the count of overseas private citizens. The expected participation of private Americans overseas in census 2000 should be at least as great as their absentee voting in Federal, State, and local elections.

Third, data quality. For nearly a quarter century, Americans abroad have used the Federal Postcard Application to vote by absentee ballot. This form has been accepted by U.S. voting officers in all 50 States and the District of Columbia. According to the Defense Department, there has never been a pattern of abuse or fraud by Americans abroad during this period. The OCCC goes one step further than the FPCA, requiring that Americans abroad list their U.S. passport numbers.

Next, allocation of overseas population by State. Census 2000 should include all Americans residing overseas in the State-by-State population figures used to apportion seats in the House of Representatives.

As we said earlier, the distortion is what's taking place now, not what we are proposing to do. Respondents would list their last U.S. State residence on the OCCC, just as they currently do in submitting their FPCAs. Let's not forget that the Bureau has already de-

parted from the usual domestic residence standard in counting federally affiliated Americans abroad for purposes of apportionment.

Operational issues. Including Americans abroad in census 2000 should be relatively straightforward in our assessment. The distribution of the OCCC to overseas private citizens should follow essentially the same channels as the FPCA involving U.S. embassies and consulates, as well as American groups worldwide.

And finally, timing. If there is one thing we agree with the Census Bureau on, it is that time is of the essence, but the good news is that no rocket science is involved in this effort and there is no need to recreate the wheel. Using our system and with the wealth of talent that the Census Bureau has at its disposal, we are confident that everything can be up and running by next April.

In conclusion, Mr. Chairman and Mrs. Maloney, it is high time to overhaul an obsolete policy that treats U.S. citizens overseas as nobodies rather than the valuable national asset that they are. Including Americans abroad in the census is long overdue, and this would represent an important step forward for U.S. citizens and U.S. interests worldwide in the global economy of the 21st century.

Thank you, Mr. Chairman, Mrs. Maloney.

Mr. MILLER. Thank you, Mr. Hamod. I want to thank all of you all for submitting your written testimony in advance because I did have the pleasure of reading it yesterday and preparing some of the thoughts for today's hearing. So thank you very much for that.

[The prepared statement of Mr. Hamod follows:]



Census 2000 Coalition
Americans Abroad Count, Too

**Hearing Before the
Subcommittee on the Census
House Government Reform Committee**

**on the
Inclusion in Census 2000 of
Americans Residing Overseas**

June 9, 1999

**Statement of David A. Hamod
Executive Director
Census 2000 Coalition**

American Business Council of the Gulf Countries • American Citizens Abroad • Asia-Pacific Council of American Chambers of Commerce • Association of American Chambers of Commerce in Latin America • Association of Americans Resident Overseas • Democrats Abroad • European Council of American Chambers of Commerce • Federation of American Women's Clubs Overseas • Republicans Abroad • World Federation of Americans Abroad

c/o Intercom International Consultants
1101 30th Street, N.W. ♦ Suite 500 ♦ Washington, DC 20007
202-887-1887 ♦ 202-887-1888 ♦ Hamod@intercom-usa.com

Thank you, Mr. Chairman, for the opportunity to testify this morning. My name is David Hamod, and I serve as Executive Director of the Census 2000 Coalition -- an ad hoc, bipartisan group dedicated to including all Americans living and working overseas in next year's census. The "C2K Coalition," as we call it, is composed of all the major organizations representing U.S. citizens and U.S. companies overseas, including:

American Business Council of the Gulf Countries (ABCGC)
 American Citizens Abroad (ACA)
 Asia-Pacific Council of American Chambers of Commerce (APCAC)
 Association of American Chambers of Commerce in Latin America (AACCLA)
 Association of Americans Resident Overseas (AARO)
 Democrats Abroad (DA)
 European Council of American Chambers of Commerce (ECACC)
 Federation of American Women's Clubs Overseas (FAWCO)
 Republicans Abroad (RA)
 World Federation of Americans Abroad (WFAA)

I'm very pleased to say that most of these organizations are represented by witnesses on this morning's panel. I also want to draw your attention to the Coalition's joint appendix, which serves to supplement testimony provided by today's witnesses.

* * *

It may come as a shock to this Subcommittee that no one knows how many private Americans live and work overseas. The State Department estimates the number to be around 3.2 million, but other estimates, including those cited in the *Statistical Abstract of the United States*, put the number far higher -- at double or triple the State Department's estimate.

Looked at another way, the population of private Americans abroad may be as small as the greater metropolitan area of Sarasota -- Bradenton -- Tampa -- St. Petersburg -- Clearwater, or it may be as large as, say, New York City. The truth is, without help from the census, we just don't know. But one thing is very clear: If the Census Bureau chose to exclude the residents of Western Florida or New York City from Census 2000, I'm confident that there would be a hue and cry from your constituents. They would be outraged that the Census Bureau was treating them as "invisible" U.S. citizens, turning its back on some 3 million to 9 million hard-working, tax-paying Americans.

And so it is with Americans abroad

* * *

Americans living and working overseas are an increasingly important segment of the U.S. population. This is a reflection of America's growing globalization and the essential role that U.S. exports of goods, services, and expertise now play in strengthening our economy. There are millions of Americans living overseas, and this number appears to be growing at an unprecedented rate. As highly visible "ambassadors" of the United States – economically, politically, and culturally – U.S. citizens overseas play a key role in advancing America's interests around the world. This is more true today than it was 50, 25, or even 10 years ago, and with the advent of the new millennium, Americans abroad are expected to have a far greater impact on the United States in the years ahead than at any other time in U.S. history.

With this in mind, then, it is all the more perplexing that the U.S. Census Bureau is proposing to exclude private Americans overseas from Census 2000. To support U.S. interests worldwide, it makes good sense to include Americans abroad in next year's census for at least four reasons:

Competitiveness – In today's global economy, Americans abroad play a vital role in promoting U.S. competitiveness overseas and in generating jobs in the United States. In order for America's public and private sector leaders to give appropriate support to U.S. citizens and U.S. companies overseas, it is important to get a better handle on how many Americans live abroad and where they live. By way of analogy: If a team captain does not know how many players are at his disposal, how can he possibly field much of a team, let alone compete successfully?

Representation – Through the census, the U.S. Government counts Americans every ten years, and there is no reasonable basis for excluding millions of Americans just because they are living overseas at the time. Like Americans who reside within the 50 United States and the District of Columbia, U.S. citizens abroad vote in the United States, pay U.S. taxes, and generally stay in touch with their home communities in the USA.

Equity – U.S. Government employees and federally-affiliated workers overseas are included in the census. It is wrong for the U.S. Government to "take care of its own" and to discriminate against those Americans who do not work for the government. All Americans – regardless of their employment status or where they live – deserve the right to be counted.

Accuracy – The Census Bureau says that it wants Census 2000 to be the "most accurate census ever." But the Bureau cannot willingly and knowingly exclude millions of Americans living overseas and still claim with any credibility that its work is accurate. If the Census Bureau is committed to accurate data for reasons of apportionment and for other purposes, then it must include private Americans abroad.

Getting the Word Out: Forging a Partnership?

The Census Bureau has expressed concern that it does not have the resources to include all Americans abroad in Census 2000. With this in mind, members of the Census 2000 Coalition have volunteered to do the lion's share of the work involved in "getting the word out" to private U.S. citizens residing overseas.

In our view, this arrangement is very consistent with the Bureau's Census 2000 Partnership Program, and we are hopeful that the Census Bureau will take advantage of our offer to assist.

Working hand-in-hand with American business and civic groups overseas should provide the Census Bureau with an opportunity to reach out to Americans abroad in a cost-effective and timely fashion.

The objectives of the Census 2000 Partnership Program, as we understand them, are three-fold:

- To increase the census response rate;
- To reduce the differential undercount;
- To communicate a consistent census message.

The Census Bureau, in our opinion, would serve all three objectives by working with members of the Census 2000 Coalition around the world.

The Census Bureau says that it encourages organizations to become Partners when:

- Census 2000 is consistent with the organization's focus;
- The organization feels that educating its constituents about Census 2000 is important;
- The organization feels its membership/constituents would benefit from knowledge/awareness about Census 2000.

Our Coalition's members clearly meet these criteria, and we look forward to forging a partnership with the Census Bureau so that we might assist the Bureau in its efforts to "spread the word" about Census 2000 to Americans abroad.

Step by Step: Counting Overseas Americans

The C2K Coalition is proposing an efficient and relatively inexpensive method of counting private Americans abroad. Our proposal is modeled after the Federal Post Card Application (FPCA) process, through which Americans overseas have voted successfully by absentee ballot for more than two decades. As we see it, this is a simple five-step process.

Step One – Preparation of the OCCC. The Census Bureau reviews the Overseas Citizen Census Card (OCCC) that has been developed by members of the C2K Coalition. (A draft OCCC is included in the Coalition's joint appendix, and an enlarged version is displayed before the Subcommittee on an easel.) Once the OCCC has been approved by the Census Bureau, it is printed by the Government Printing Office or by a private vendor.

Step Two – Dissemination of OCCCs. The OCCC is distributed to Americans abroad through three basic channels. First, it is available on the Census Bureau's Web page, where it can be downloaded and printed by U.S. citizens around the world. (In future years, it is hoped that U.S. citizens will be able to supply information to the Census Bureau electronically, via the Internet, but it is unlikely that such technology will be available and time-tested by next April.) Second, OCCCs are shipped directly to overseas Americans organizations for distribution to their respective members. Third, via diplomatic pouch or APO, OCCCs are disseminated through U.S. Embassies and Consulates around the world, where the OCCCs are made available to Americans abroad. (This process is akin to the Census Bureau's proposed "walk-in centers," which will accommodate individuals who are difficult to enumerate.)

Step Three – Submission of OCCC's. It is envisaged that OCCC's will be returned to the Census Bureau one of two ways. First, Americans abroad could mail the completed OCCC's directly to the Census Bureau. Second, overseas Americans could return the OCCC's to the U.S. Embassy or Consulate, which would then forward the OCCC's to the Census Bureau via diplomatic pouch, APO, or an international courier company. (In the past, when overseas Americans have voted by absentee ballot, at least one international courier company has stepped forward to deliver these to the U.S. Government on a complimentary basis.)

Step Four – Tallying the OCCC's. Once delivered to the Census Bureau, it is expected that the Bureau would enter the OCCC data in the most efficient manner possible (possibly using optical character recognition capabilities).

Step Five – Clarification and Verification. The OCCC requires Americans abroad to provide their passport numbers, which could be checked against State Department records if need be. If the Census Bureau has additional questions concerning the OCCC, the C2K Coalition suggests two options for tracking down further data. Option one involves working with staff at U.S. Embassies and Consulates. Option two involves contacting the overseas American directly by e-mail, fax, or telephone (all of which are listed on the OCCC). With today's technology, e-mail has become the fastest and least expensive way to communicate globally, and Americans abroad may be the most "wired" overseas citizens on earth.

Addressing Census Bureau Concerns

The Census Bureau has expressed some concerns about its ability to enumerate private Americans living and working overseas. The C2K Coalition recognizes that counting overseas Americans may be a challenge for the Census Bureau but, in our assessment, none of the obstacles that the Census Bureau has raised are insurmountable. Most of these concerns, in our assessment, are simply red herrings that the Census Bureau has used as a pretext to discriminate against Americans abroad.

We regret that it has taken *years* for the Census Bureau to study seriously the low cost, "common sense" proposals that have been put forward by Americans abroad. As a result of this delay, valuable time and valuable opportunities have been squandered. Moreover, the Census Bureau's stonewalling has raised serious questions about the Bureau's lack of vision for the new millennium and its inability to deal with an American population that is more global today than at any time in our nation's history.

The Census Bureau's concerns, as they have been expressed to the C2K Coalition, can be divided into six major categories: cost, the extent of participation, data quality, the allocation of overseas population by state, operational issues, and timing. Each of these is explored below.

Cost — The Census Bureau says that it will cost too much to count private Americans living and working overseas. The C2K Coalition has seen no Census Bureau estimate of what it would cost to count Americans abroad, and we welcome an opportunity to review the Bureau's calculations.

In our estimation, the bill for counting Americans abroad will amount to a fraction of what it costs to count domestic Americans. Why? First, there is no need to hire legions of contractors to go door-to-door for enumeration purposes. Much of the logistical work will be done by C2K Coalition member organizations, whose volunteers will work closely with U.S. Embassies and Consulates around the world, just as they do when they “get out the vote” overseas. Second, the onus is on Americans abroad, not the Census Bureau, to take the initiative. Overseas Americans are responsible for picking up the OCCC and submitting it to the Bureau, which does relatively little work before the OCCCs come streaming in from Americans abroad.

Extent of Participation — Americans abroad who return an OCCC would add appreciably to the overall count of U.S. citizens residing abroad. The Census Bureau has long recognized that its domestic counts underestimate certain categories of U.S. and non-U.S. citizens in the United States who are difficult to track down, such as inner city poor, inhabitants of rural areas, and the homeless. The Census Bureau mounts strong efforts to count as many of these residents as it can, and the Bureau should apply this same level of commitment to the count of overseas private citizens.

The expected participation by private Americans overseas in Census 2000 should be at least as great as their absentee voting in federal, state and local elections. Based on U.S. Defense Department and State Department data, at least 750,000 private U.S. citizens overseas sought to register and vote absentee in federal, state and local elections in 1996 -- a significant increase from 1976 when President Ford signed the Overseas Citizens Voting Rights Act. And unlike 30 years ago, for the 1970 Census, the Bureau and overseas groups are now able to utilize global technology, like the Internet, to educate Americans abroad on how to participate in Census 2000.

Data Quality — For nearly a quarter century, Americans abroad have used the Federal Post Card Application (FPCA) to vote by absentee ballot. This form has been accepted by U.S. voting officers in all fifty States and the District of Columbia. According to the U.S. Department of Defense, which administers the program, there has never been a pattern of abuse or fraud by Americans abroad during this period.

The OCCC designed for Census 2000 will go one step further, specifying that Americans abroad must list their U.S. passport numbers (which is not required for the FPCA). This will serve as a built-in mechanism to monitor the U.S. citizenship of those persons submitting OCCCs.

Moreover, the information submitted on the OCCC, like that submitted on the FPCA, will be subject to the Federal False Statements Act. This requirement should further inhibit the possibility of incorrect data.

Allocation of Overseas Population by State — Census 2000 should include all Americans residing overseas in the state-by-state population figures used to apportion seats in the U.S. House of Representatives. The Census Bureau includes federally-affiliated U.S. citizens overseas for apportionment purposes, but does not include private Americans abroad.

Respondents would list their last U.S. state residence on the OCCC, just as they currently do in submitting their FPCAs.

The Census Bureau has already departed from the “usual domestic residence” standard in counting federally-affiliated Americans abroad for purposes of apportionment. The U.S. Supreme Court in 1992 expressly validated inclusion of federally-affiliated overseas Americans for purposes of apportionment in the 1990 Census, noting that the term “usual residence” can “mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place.” For overseas private Americans, the Congressionally mandated right to register and vote absentee is that enduring tie. The Census Bureau has no justifiable basis for attempting to discriminate against private sector Americans abroad in applying this “usual residence” test.

Operational Issues — As suggested above, planning and implementing the inclusion of Americans abroad in Census 2000 should be relatively straightforward. The distribution of the OCCC to overseas private citizens should follow essentially the same channels as the FPCA, involving U.S. Embassies and Consulates, as well as American groups worldwide. If the Census Bureau feels the need to modify the OCCC in a way that better suits the operational needs of the Bureau, the C2K Coalition would be pleased to work with the Bureau on this — provided that the Census Bureau keeps the form as uncomplicated and unencumbered as possible.

Timing — The Census Bureau rightly points out that time is of the essence. We agree and, as we noted above, we regret that it has taken the Bureau so long to focus on this issue. But the Bureau’s argument that there is no time to involve private Americans abroad in Census 2000 just doesn’t hold water. No rocket science is involved in this effort, and there is no need to re-create the wheel. We have outlined a simple, straightforward procedure for including Americans abroad in Census 2000. With the wealth of talent that the Census Bureau has at its disposal, we are confident that the necessary paperwork and procedures can be up and running before next April.

* * *

In conclusion, Mr. Chairman, it is high time to overhaul an obsolete policy that treats U.S. citizens overseas as “nobodies” rather than as the valuable national asset they are. Including Americans abroad in the census is long overdue, and this would represent an important step forward for U.S. citizens and U.S. interests worldwide in the global economy of the 21st Century.

Mr. MILLER. We will now proceed with Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Miller, Mrs. Maloney. I am honored to be here today regarding the inclusion of private overseas Americans in the census 2000.

My name is Don Johnson. I am vice president and chairman of the census committee of the Association of Americans Resident Overseas [AARO], a nonprofit organization founded in 1973 to represent U.S. citizens living abroad. I have come here from Paris, France, so that I can give you firsthand the case for ensuring overseas private citizens the opportunity to be counted in census 2000.

My organization, AARO, played a key role in helping persuade Congress to enact the Overseas Citizens Voting Rights Act of 1975. And as a result of this law, overseas private Americans are registering and voting absentee in Federal elections in record numbers.

Now we think the time has come to include us in the decennial census. Congress decided, a quarter century ago, that we count enough to vote for the President, Senators, and Representatives. Why would Congress now allow the Census Bureau to exclude us from being counted in the census?

Having worked for at least 8 years in international assignments, I know personally what it is like for Americans to live overseas. I am a retired American businessman and electronics engineer who has spent most of his career working for Texas Instruments. For the last 2½ years, I have been working on special projects at AARO with emphasis on the census that started with a first letter with Martha Feinsworth reaching back to April 1977.

We at AARO know that the Census Bureau can mount a successful effort to count overseas private Americans. Even though the Census Bureau's effort to include private Americans in the 1970 census did produce meager results, the Bureau at least overcame the hurdle in that census of developing enough confidence to verify the data.

In response to congressional pressure, the Census Bureau found a way to include military and other government employees and their dependents in the 1990 census from administrative records. In 1992, the U.S. Supreme Court upheld the validity of their doing so.

We agree that the inclusion of overseas private citizens would be a bigger challenge than the count of federally affiliated Americans abroad. We are confident, however, that the Census Bureau can do this job if Congress tells the Bureau to do it and provides the Bureau with the necessary funds. I can assure you that AARO and other citizens overseas organizations will make every effort to help the Census Bureau get the job done just as we have worked side by side with the Department of Defense in building up the rolls of overseas voters under the Federal Voting Assistance Program.

We believe that the OCCC card, like the one you see here today, would serve as an effective vehicle for counting overseas private Americans in census 2000. The use of OCCC would be consistent with the Census Bureau's use of its own "be counted" card to identify U.S. residents who would not otherwise be enumerated.

The Census Bureau has long recognized that its domestic count underestimates certain categories of U.S. and non-U.S. citizens in

the United States who are difficult to track down such as inner-city poor, inhabitants of rural areas and the homeless. The Census Bureau mounts strong efforts to count as many of these residents as it can, and the Bureau should apply the same level of commitment to the counting of overseas private citizens.

The expected participation by private Americans overseas in census 2000 should be at least as great as their absentee registration and voting in Federal elections. Based on U.S. Defense Department and State Department data, at least 750,000 private U.S. citizens overseas sought to register and vote absentee in Federal elections in 1996, a significant increase since the enactment of the Overseas Citizen Voting Rights Act of 1975. The Census Bureau's reluctance to consider acceptance of the OCCC seems to represent a presumption that overseas private Americans will file false statements.

We think this attitude of presumptive distrust of the overseas private American community is simply uncalled for. Why should overseas private Americans be presumed to file false OCCCs when the Federal Voting Assistance Program has assured us that there has never been a pattern of abuse or fraud in absentee voting by Americans abroad?

The census has already established partnerships with over 100 organizations to assist in helping make sure census 2000 is the best ever. These organizations include nearly a dozen groups representing American residents from almost every region of the world. If the Census Bureau can make such a strong effort to count Americans who have come to the United States from these overseas jurisdictions, how can the Census Bureau now turn its back on counting American citizens who have moved to Africa, the Middle East, Asia, Latin America, and Europe from the United States? The C2K coalition has prepared a preliminary to-do list which I have attached here to my statement.

I think, at this point, I will thank you again for the ability to give you some testimony today, and I look forward to meeting with you again.

Thank you.

Mr. MILLER. Thank you, Mr. Johnson. Thank you for staying close to the 5-minutes. I appreciate that.

[The prepared statement of Mr. Johnson follows:]

**TESTIMONY OF DON JOHNSON,
VICE PRESIDENT AND CHAIRMAN OF THE CENSUS COMMITTEE
OF THE ASSOCIATION OF AMERICANS RESIDENT OVERSEAS,
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON THE CENSUS
June 9, 1999**

Mr. Chairman, distinguished Members of the Subcommittee:

I am honored to appear before you today regarding the inclusion of private overseas American citizens in Census 2000.

My name is Don Johnson. I am Vice President and Chairman of the Census Committee of the Association of Americans Resident Overseas (AARO), a nonprofit organization founded in 1973 to represent U.S. citizens living abroad. I have come here from Paris, France so that I can give you first hand the case for ensuring overseas private citizens the opportunity to be counted in Census 2000.

My organization, AARO, played a key role in helping persuade Congress to enact the Overseas Citizens Voting Rights Act of 1975. As a result of this law, overseas private Americans are registering and voting absentee in federal elections in record numbers. Now, we think the time has come to include us in the decennial census. Congress decided a quarter century ago that we count enough to vote for the President, Senators and Representatives. Why would Congress now allow the Census Bureau to exclude us from being counted in the Census?

Having worked for at least eight years in international assignments, I know personally what it is like for Americans to live overseas. I am a retired American businessman who has spent most of his career working for Texas Instruments. For the last two and a half years I have been working on special projects for AARO, including Census 2000.

We at AARO know that the Census Bureau can mount a successful effort to count overseas private Americans. Even though the Census Bureau's effort to include private Americans in the 1970 census produced meager results, the Bureau at least overcame the hurdle in that census of developing enough confidence to verify the data. In response to Congressional pressure, the Census Bureau found a way to include overseas military and other government employees and their dependents in the 1990 census from administrative records. In 1992, the U.S. Supreme Court upheld the validity of their doing so.

We agree that the inclusion of overseas private citizens would be a bigger challenge than the count of federally-affiliated Americans abroad. We are confident, however, that the Census Bureau can do this job if Congress tells the Bureau to do it and provides the Bureau with the necessary funds. I can assure you that AARO and other overseas citizens organizations will make every effort to help the Census Bureau get the job done, just as we have worked side by side with the Department of Defense in building up the rolls of overseas voters under the Federal Voting Assistance Program.

We believe that an Overseas Citizen Census Card (OCCC) like the one in the joint appendix and displayed before you today would serve as an effective vehicle for counting overseas private Americans in Census 2000. The use of the OCCC would be consistent with the Census Bureau's use of its own "Be Counted" card to identify U.S. residents who would not otherwise be enumerated.

The Census Bureau has long recognized that its domestic count underestimates certain categories of U.S. and non-U.S. citizens in the United States who are difficult to track down, such as inner-city poor, inhabitants of rural areas and the homeless. The Census Bureau mounts strong efforts to count as many of these residents as it can and the Bureau should apply the same level of commitment to the count of overseas private citizens.

The expected participation by private Americans overseas in Census 2000 should be at least as great as their absentee registration and voting in federal elections. Based on U.S. Defense Department and State Department data, at least 750,000 private U.S. citizens overseas sought to register and vote absentee in federal elections in 1996 – a significant increase since the enactment of the Overseas Citizens Voting Rights Act of 1975.

I wish to address key problems that the Census Bureau has raised with the C2K Coalition in explaining why they do not want to count overseas private Americans in Census 2000. Those four problems are:

- Timing
- Validation
- Operational issues, and
- Budget.

First, the timing problem is a canard. It's definitely not too late to include overseas private Americans in Census 2000. AARO, ACA and other overseas American groups have been pounding on the doors of Congress and the Census Bureau for years trying to start up the mechanisms necessary to include overseas private Americans in Census 2000. We can still succeed if Congress tells the Census Bureau now to make this happen. Keep in mind that the Census Bureau did not start to organize the count of federally-affiliated American overseas in the 1990 census until they were ordered to do so by Congress in July 1989.

Once the Congress lets the Census Bureau know they must count overseas private citizens in Census 2000, AARO, ACA and other members of the C2K Coalition can bring the full force of their resources to the service of the Census Bureau to help make sure this project will be a success. We organize similar efforts with the Federal Voting Assistance Program every two years to get out the absentee vote in federal elections.

Second, let's talk about validation. The OCCC is designed to be a self-validating card requiring detailed identifying information, including the U.S. passport number or other proof of citizenship of every overseas private citizen listed on the card. We think that overseas private citizens should be presumed to be filing valid OCCCs. The Census Bureau will have

adequate resources to cross-check passport numbers and other identifying information to detect any pattern of fraudulent filing.

The Census Bureau's reluctance to consider acceptance of the OCCC seems to represent a presumption that overseas private American will file false statements. We think that this attitude of presumptive distrust of the overseas private American community is simply uncalled for. Why should overseas private Americans be presumed to file false OCCCs when the Federal Voting Assistance Program has assured us that there has never been a pattern of abuse or fraud in absentee registration and voting by Americans abroad?

Third, we believe that the *operational issues* of including overseas private Americans in Census 2000 can readily be resolved. As we have said, the entire C2K Coalition stands at the service of the Census Bureau in making this work. We are confident that the Federal Voting Assistance Program and Department of State can provide enormously useful, practical guidance in applying their "Get Out The Vote" experience to dissemination of the OCCC.

The Census Bureau has already established partnerships with over 100 organizations to assist in helping make sure Census 2000 is the best ever. These organizations include nearly a dozen groups representing American residents from almost every region of the world. If the Census Bureau can make such a strong effort to count Americans who have come TO the United States FROM these overseas jurisdictions, how can the Census Bureau now turn its back on counting American citizens who have moved TO Africa, the Middle East, Asia, Latin America and Europe FROM the United States?

The C2K Coalition has prepared a preliminary to-do list showing some of the principal steps that the Census Bureau could begin taking tomorrow to include overseas private Americans in Census 2000. I have attached a copy of the to-do list to my statement; as I said before, the C2K Coalition is prepared to help the Census Bureau at every step along the way.

Finally, let's talk about *budget issues*. Counting overseas private Americans would cost the Census Bureau some money, but we believe that this cost would not be appreciably greater on a per capita basis than counting Americans at home given the experience of the Federal Voting Assistance Program.

Mr. Chairman and the other Members of the Subcommittee, I cannot thank you enough for the chance to appear before you today. I am confident that you will do the right thing by overseas private Americans in Census 2000.

**APPENDIX TO THE
TESTIMONY OF DON JOHNSON,
VICE PRESIDENT AND CHAIRMAN OF THE CENSUS COMMITTEE
OF THE ASSOCIATION OF AMERICANS RESIDENT OVERSEAS,
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON THE CENSUS
June 9, 1999**

June 9, 1999

**PROPOSED TO-DO LIST
FOR INCLUSION OF OVERSEAS PRIVATE CITIZENS
IN CENSUS 2000**

- Congress instructs Census Bureau to include overseas private citizens in Census 2000.
- Census Bureau issues press release announcing intention to include overseas private citizens in Census 2000, and calling for overseas citizen organizations (OCOs) to join in partnerships with the Bureau to make this count a success.
- Census Bureau adds this press release to its Web site and establishes location on the site for further updates of the overseas citizen census.
- Census Bureau develops operational plan and preliminary budget for inclusion of overseas private citizens in Census 2000.
- Census Bureau obtains any necessary preliminary approval from Office of Management and Budget (OMB).
- Census Bureau begins entering into partnership agreements with OCOs to build support for the overseas citizen census.
- Census Bureau works with OCO partnerships in refining the design of the Overseas Citizen Census Card (OCCC).
- Census Bureau instructs computer software consultants to develop appropriate methods for capturing data from OCCC and verifying data, as may be appropriate, through State Department passport number records and other citizenship verification sources.
 - Census Bureau works with software consultants in further refining design of the OCCC to facilitate this data recapture by use of optical character recognition (OCR) or other techniques.
- Census Bureau enters into cooperative arrangement with Defense Department's FVAP to obtain information about the FVAP's highly successful program for dissemination of the Federal Post Card Application (FPCA) and related overseas absentee registration and voting information.
- Department of Commerce (DOC) consults with Department of State to designate a Census Assistance Officer (CAO) at each embassy and consulate, with the possibility of relying on DOC Commercial Counselors for assistance where appropriate.

- Census Bureau enters into arrangements with State Department for overseas private citizens to deposit their completed OCCCs at embassies and consulates for forwarding to Bureau in a manner analogous to deposit and forwarding of completed FPCAs.
- Census Bureau arranges with Department of State to provide assistance to Bureau in verifying passport holder identification from OCCCs.
- Census Bureau, in consultation with FVAP and OCO partners, develops procedures for distribution of OCCCs, relying in part on experience gained in distribution of the FPCA.
- Census Bureau works with OCO partners to test OCCC form with overseas citizen focus groups.
 - Census Bureau refines design of OCCC to take into account focus group comments.
- Census Bureau works with OCO partnerships to develop answers to frequently asked questions (FAQs) based on focus group comments for posting on the Bureau Web site.
- Census Bureau obtains any additional necessary approval from OMB for final version of OCCC.
- Census Bureau arranges for printing of sufficient number of OCCCs for distribution, based in part on experience gained in setting print orders for the FPCA.
- Census Bureau arranges for distribution of OCCCs through embassies, consulates, OCO partners and U.S. corporate offices overseas.
 - Census Bureau posts OCCC on its Web site.
- OCO partners post information about OCCC on their Web sites with hyperlink to Census Bureau Web site.
- Census Bureau works with OCO partners in developing broadcast, print and electronic information dissemination program about inclusion of overseas private citizens in Census 2000.
- After April 1, 2000, Census Bureau begins receiving and processing completed OCCCs and engaging in appropriate verification process.
- When this verification process is completed, Census Bureau includes overseas private citizens census data submitted for purposes of Congressional

reapportionment at the same time as it submits data for federally-affiliated overseas Americans.

- Census Bureau prepares report on the experience of including overseas private citizens in Census 2000 and lays groundwork for refinement of the process for their inclusion in Census 2010.

Mr. MILLER. Mr. Gribble.

Mr. GRIBBLE. Good morning, Mr. Chairman, Mrs. Maloney. Thank you for hearing us today. We greatly appreciate the opportunity to put forth our testimony.

My name is Leigh Gribble. I am secretary of the American Business Council of the Gulf Countries and a member of the executive committee of Republicans Abroad. I am testifying today on behalf of the American Chambers of Commerce Abroad and the international arm of the Republican party.

I am a retired naval officer and the owner of a consulting firm that is incorporated and registered in the State of Florida. My family and I have lived in Kuwait in connection with my military service and now my private business for the past 7 years. However, we pay taxes and vote in Florida's Fourth Congressional District, which is where we hope to return to live full-time within the next few years.

I am honored today to give voice to the concerns of tens of thousands of American business people and Republicans around the world. We want to be counted in the census 2000. We want to be included alongside our fellow American citizens in this critical national event. We are worried, no I dare say we are certain, that unless you and your colleagues take action promptly, the Census Bureau will exclude us from the census 2000. In doing so, they will demean our citizenship and our contribution to America. We continue to contribute to the Federal coffers, even as we live and work overseas, through payment of personal and corporate income taxes. We ask as citizens and taxpayers you do not allow us to be excluded from the rolls of the census.

As a naval officer who served in the Gulf war, let me tell you something that really appalls me. I would be counted by a Census Bureau in census 2000 if I had remained on active duty in the Navy, but the Census Bureau counted me out of the census the day I retired. How can you permit the Census Bureau to strip away this important aspect of American citizenship simply because I hung up my uniform to defend my country's democratic principals as a private citizen?

Some at the Census Bureau say Americans overseas do not want to be counted. This is simply not true. American citizens in the more than 160 country and regional chapters of the American Chambers of Commerce and Republicans Abroad have stated clearly, in words and deeds, that they want to be counted. Their support for my appearance here today attests to that tremendous desire to be counted.

Further, these Americans have offered to join in partnership with the Census Bureau to facilitate the enumeration of those citizens, who were overseas at the time of the census. We will assist in locating members of the American community of our respective countries. We will assist in disseminating census information and forms. We will assist in gathering completed census forms and forwarding them to the United States. We want to be counted and we are willing to assist the Census Bureau in any way we can to accomplish this.

Overseas, an American Chamber of Commerce is the private hub of the American community. We have very strong ties with our

host countries to all the various American social and civic organizations, schools and, of course, U.S. companies.

We can and will use those ties to get census information out and to help gather completed forms back from great numbers of American citizens. By the way, we found out this morning the board of directors of the U.S. Chamber of Commerce, which is the parent organization of most of our American Chambers overseas, adopted a resolution supporting the inclusion of American overseas in census 2000. They did that at 11:30 this morning.

Republicans Abroad has been a source of voter registration and absentee balloting information and assistance to overseas Americans for over 20 years. We can and will bring the organizational expertise that we have developed in decades of getting the absentee ballot out overseas to bear in assisting the Census Bureau with the counting of U.S. citizens abroad. The overseas citizens census card and the Census 2000 Coalition has drawn heavily upon the experience of using the Federal Postcard Application for voter registration and ballot requests.

Republicans Abroad stand ready, as I am sure our counterparts and Democrats abroad do as well, to partner with the Census Bureau to do whatever it takes to count American citizens overseas.

In summary, American business people and other private Americans overseas contribute mightily to the fabric of American society even though we may be far from U.S. shores. We generate U.S. exports in American jobs. We pay U.S. taxes. We are Ambassadors of American values and democracy, and we actively participate in the U.S. electoral process.

We private American citizens—residents abroad—should not be penalized for our overseas contribution to the United States. Our citizenship should be valued and we should be counted in the census just as overseas government employees and their families are. We will do our part to ensure that Americans overseas are counted in the census 2000. We respectfully ask that you do the same.

I just have one last little bit to throw in here before I conclude.

The census 2010 is too late for me. My family and I will be back in Ormond Beach, FL within the next 2 or 3 years. I hope when we get back that the infrastructure that will be generated by the Federal revenues that I am contributing to now, and have been for the past 5 years in Kuwait, will be there to meet me. I fear that if we wait until the year 2000, the sewers, the highways and the schools won't be as good as they could be.

Thank you.

Mr. MILLER. Thank you.

[The prepared statement of Mr. Gribble follows:]

**TESTIMONY OF L. LEIGH GRIBBLE,
SECRETARY OF THE AMERICAN BUSINESS COUNCIL
OF THE GULF COUNTRIES
AND EXECUTIVE COMMITTEE MEMBER OF REPUBLICANS ABROAD,
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE,
SUBCOMMITTEE ON THE CENSUS
June 9, 1999**

Good morning, distinguished Chairman and Committee members.

My name is Leigh Gribble. I am Secretary of the American Business Council of the Gulf Countries and a member of the Executive Committee of Republicans Abroad. I am testifying today on behalf of the American Chambers of Commerce abroad and the international arm of the Republican Party.

I am a retired naval officer and the owner of a consulting firm that is incorporated and registered in the State of Florida. My family and I have lived in Kuwait, in connection with my military service, and now my business, for the past seven years. However, we pay taxes and vote in Florida's Fourth Congressional District, which is where we hope to return to live full time, within the next few years.

I am honored today to give voice to the concerns of tens of thousands of American business people and Republicans around the world. We want to be counted in Census 2000. We want to be included alongside our fellow American citizens in this critical national event.

We are worried, no, I dare say, we are certain, that unless you and your colleagues take action promptly, the Census Bureau will exclude us from Census 2000. In doing so, they will demean our citizenship and our contribution to America. We continue to contribute to the federal coffers, even as we live and work overseas, through our payment of personal and corporate U.S. income taxes. We ask, as citizens and taxpayers, that you do not allow us to be excluded from the rolls of the Census.

Let me tell you something that really appalls me. I am a retired naval officer who served during the Gulf War. I would have been counted by the Census Bureau in Census 2000 if I had remained on active duty in the Navy, but the Census Bureau "counted me out" of the Census the day I retired. The Census Bureau took the trouble to count me as an overseas naval officer in the 1990 Census while I was defending my country in the military. How can you permit the Census Bureau to strip away this symbol of American citizenship the day I hung up my uniform to defend my country's democratic principles as a private citizen?

Some at the Census Bureau say that Americans overseas do not want to be counted. This is simply not true. American citizens in the more than 160 country and

regional chapters of the American Chambers of Commerce and Republicans Abroad have stated clearly in words and deeds that they want to be counted. Their support for my appearance here today attests to that tremendous desire to be counted.

Further, these Americans have offered to join in partnership with the Census Bureau to facilitate the enumeration of those citizens who are overseas at the time of the Census. We will assist in locating members of the American communities in our respective countries. We will assist in disseminating Census information and forms. We will assist in gathering completed Census forms and forwarding them to the United States. We WANT to be counted and we are willing to assist the Census Bureau in any way we can to accomplish this.

Overseas, an American Chamber of Commerce is the private hub of the American community. We have very strong ties, within our host countries, to all of the various American social and civic organizations, schools, and of course, U.S. companies. We can, and will, use those ties to get Census information out to, and help in obtaining completed forms back in from, great numbers of American citizens.

By the way, the Board of Directors of the U.S. Chamber of Commerce, the parent organization of most of our American Chambers overseas, is voting today on a resolution supporting the inclusion of overseas Americans in Census 2000. We expect that this resolution will be unanimously endorsed and adopted by the U.S. Chamber before this hearing concludes today.

Republicans Abroad has been a source of voter registration and absentee balloting information and assistance to overseas Americans for over 20 years. We can, and will, bring the organizational expertise that we have developed in decades of getting the overseas absentee vote out to bear in assisting the Census Bureau with the counting of U.S. citizens abroad. The Overseas Citizens Census Card that the Census 2000 Coalition has drafted draws heavily upon our experience in using the Federal Post Card Application for voter registration and ballot requests. Republicans Abroad stands ready, as I'm sure our counterparts in Democrats Abroad do as well, to partner with the Census Bureau to do whatever it takes to count American citizens overseas.

In summary, American business people and other Americans overseas contribute mightily to the fabric of American society, even though we may be far from U.S. shores. We generate U.S. exports and American jobs, we pay U.S. taxes, we are ambassadors of American values and democracy, and we actively participate in the U.S. electoral process.

We, private Americans citizens resident abroad, should not be penalized for our overseas contribution to the United States. Our citizenship should be valued, and we should be counted in the Census just as overseas government employees and their families are. We will do our part to ensure that Americans overseas are counted in Census 2000. We respectfully ask that you do the same.

Mr. MILLER. Ms. van Schooneveld.

Ms. VAN SCHOONEVELD. Mr. Chairman, honorable members of the subcommittee, I am pleased and privileged to address you today on an issue of great concern to Americans abroad.

Before I start with my prepared statements, I would like to say that my organization, American Citizens Abroad, first started trying to converse with the Census Bureau on this subject in 1993. We launched a major campaign in 1996. I, too, am sad that it is summer of 1999 before we are before you, but we nevertheless feel extremely strongly that we want overseas Americans to be included at the beginning of the new millennium, even if it is only a percentage of them.

My name is Dorothy van Schooneveld, and I am executive director of American Citizens Abroad, ACA, a non-profit organization founded in 1978 to represent the concerns of the uncounted millions of private American citizens residing outside the United States. I have flown here from Geneva, Switzerland, so that I can thank you for lending your eyes and ears to this presently invisible segment of the American population.

I would ask you to keep in mind that Congress granted overseas private citizens the right to register and vote absentee in Federal elections almost a quarter century ago with the passage of the Overseas Citizens Voting Rights Act of 1957. They vote in your States, in your districts. Some of them helped elect you. If you care about representing all your constituents, and I know from experience that Members of Congress care deeply about their constituents, let them all be included in census 2000 so that you and others know they exist.

Ironically, ever since overseas private Americans gained the right to register and vote absentee in Federal elections, these overseas citizens have never been included in a U.S. census count. We Americans abroad are thus in the paradoxical position of being told by our government, your vote counts, but you don't. Who are we, these uncounted Americans?

I am an American lawyer, member of the Indiana and Illinois bars, presently employed by the World Health Organization. I have lived abroad for a dozen years now.

For the last 7 years, I have been volunteering my services to American Citizens Abroad. I have personally corresponded with literally thousands of Americans from Nepal to New Guinea to Brazil to Iceland and countless places in between.

Americans residing abroad share many of the characteristics of their fellow citizens at home. They are your parents, relatives, neighbors, and friends who, for shorter or longer periods, are representing our Nation abroad and its industries, schools, churches, labor unions, charitable organizations, banks, and factories. They represent, just as do their families and friends at home, a talented and varied mix of our national heritage.

American students working their way through school, mothers working part-time; American men and women of commerce and finance traveling internationally, to trade, build, and invest for the benefit of American industries, towns, cities, and States. Retired military personnel and their families, senior citizens living in sunny areas, American actors, painters, and musicians spreading

our culture to every corner of the globe and scientists and teachers working to improve the quality of life for all of us.

These overseas Americans are loyal, patriotic U.S. citizens who can vote in your districts and are subject to Federal taxation. They constitute an asset to their country by spreading American Democratic ideals and cultural values in their foreign communities, exemplifying the American way of life and, incidentally, buying and selling a substantial amount of American products.

They are in a very real sense our best Ambassadors abroad. And yet, present policy permits the Census Bureau, which makes every effort to count every American resident as well as overseas government personnel and their families, to ignore all of your overseas private constituents. Their number is unknown. The State Department estimates that there are 3.2 million of them. Other organizations believe that there may be 5 to 6 million. The truth is that nobody knows.

We are confident that a mechanism built on the model of the Federal Postcard Application, FPCA, would be effective in achieving success and would guard against fraud. For nearly a quarter century, Americans abroad have used the FPCA to vote by absentee ballot. This form has been accepted by U.S. voting officers in all 50 States and the District of Columbia.

The Federal Voting Assistance Program has assured us that there has never been a pattern of abuse or fraud by Americans abroad during this period. Indeed, the overseas citizen census card [OCCC] for census 2000 would go one step further, specifying that Americans abroad must list their U.S. passport numbers, which are not required for the FPCA. This will serve as a built-in mechanism to monitor the U.S. citizenship of those persons submitting OCCCs. Of course, information submitted on the OCCC, like that submitted on the FPCA, will be subject to the Federal False Statements Act. This requirement should further inhibit the possibility of incorrect data.

The members of the C2K coalition believe that census 2000 should include overseas private Americans in the State-by-State population figures used to apportion seats in the U.S. House of Representatives. Respondents would list their last U.S. State residence on the OCCC just as they currently do in submitting their FPCAs.

The Census Bureau already includes federally affiliated U.S. citizens overseas for apportionment purposes but does not include private Americans abroad. The U.S. Supreme Court, in 1992, expressly upheld inclusion of federally affiliated overseas Americans for purposes of apportionment in the 1990 census, noting that the term usual residence can mean more than mere physical presence and has been used broadly enough to include some element of allegiance or enduring tie to a place.

For overseas private Americans, the congressionally mandated right to register and vote absentee is that enduring tie. The 1992 Supreme Court case *Franklin v. Massachusetts* is included in our joint appendix. I would like to address specifically how my organization, American Citizens Abroad, and other organizations of private Americans abroad, could play a partnership role in helping to attain a meaningful count of private overseas Americans in census

2000. ACA regularly corroborates with U.S. embassies and consulates and with the Defense Department's Federal Voting Assistance Program in circulating FPCAs and other U.S. Government information to citizens around the world. We are prepared to join with the Census Bureau in applying to census 2000 many of the same highly successful techniques that we have honed all over the world for several decades. This is our overseas expertise.

ACA, itself, has a mailing list of close to 9,000 Americans and American schools, groups, organizations, members of the press, and consular posts worldwide. Many of these recipients, in turn, disseminate information in our hard copy publications to their memberships and readerships.

In addition to its hard cover publications, ACA would devote space on its Website, www.aca.ch, to promote census 2000 and would send bulletins to the broad cyberspace network, which receives ACA's biweekly on-line newsletter.

And finally, ACA's entire worldwide system of country representatives, presently more than 60 contact persons in over 40 countries on 6 continents, would be actively involved and encourage participation in census 2000 in their regions. Other American voluntary associations represented here today would surely be as active as ACA.

In closing, I would like to say the following: I cannot underscore strongly enough the positive emotional message America would send its overseas citizens by including them in census 2000. We know you are there and we care.

With your permission, Mr. Chairman, I would like to enter into the record a collection of short statements on census 2000 that ACA has received in recent weeks from overseas private citizens around the world.

[The information referred to follows:]

ACA Informal Survey On Census 2000
Conducted May 25 – June 2, 1999

**Private overseas Americans should be counted in
Census 2000 for the following reasons:**

No taxation without representation. Laila Alamuddin (country representative, Lebanon) votes in New Jersey.

We either count or we don't count. Overseas Americans pay taxes and serve or have served in the military, participate in many volunteer organizations, represent American business and commercial, as well as political and cultural, interests abroad, and they deserve equal representation, not just by being counted, but by being represented properly in Congress. Frank G. Anderson (country representative, Thailand) votes in New York.

I vote in California. If I pay taxes, my voice deserves to be heard. Yolanda Bernardini, Italy.

As a loyal and tax paying U.S. citizen, I believe that my views and my existence should be recognized by those in financial and foreign policy decision making positions. Thomas F. Best, Nyon, Switzerland.

To understand the economic, political and social effects U.S. citizens abroad have on elections and should have a strong influence in voicing feelings on U.S. foreign policy decisions and operations. Erik Bjertnes, Jr., Geneva, Switzerland.

An absolutely normal procedure—are we worth less? Speaking for myself, I served in the USMC during the Vietnam era. This in itself should warrant being considered. Henry Bogsch, Founex, Switzerland.

We pay taxes in the United States and therefore should have a say in how our money is spent. In addition, we are frequent travelers to the United States. Jennifer Bullord Broggin, Switzerland (country representative, Ticino, Switzerland).

If I'm good enough to pay taxes, to the State of Maryland and the Prince George's County of Maryland, (60% of the state tax), even though I have not lived there for about 10 years, it seems obvious to me that as an American and an honorably retired military man, logically, I should be included in the 2000 census. There just does not seem to me to be any question about it. Norman Burgo (country representative, Bitburg, Germany) votes in Maryland.

My wife and I, both American citizens, live in Wales, U.K. and are registered to vote in California. We appreciate the opportunity that existing law gives us to vote in the national

elections, and would be sorely disappointed were we not to be included in the census as well.

Robert and Marilyn Bratman, Wales, United Kingdom.

As President of the American Club in Estepona, I am writing on behalf of our members here in Spain. We believe that it is illogical for the Census to make extra outreach efforts in the inner cities for the sake of accuracy, while excluding U.S. citizens abroad that could be included easily and strongly urge that this be remedied. **Paul and Marianne Bush, Estepona, Spain.**

Simply because we are not less citizen-ish because we live outside of America. I vote, therefore I count. **Harriet Cavalli, Gelterfineen, Switzerland.**

It is not only essential but imperative to know how many U.S. citizens are registered with U.S. Embassies and consulates throughout the world, for which U.S. or global or local company (or self-employed) they work, how long they will be away from the U.S.A., whether or not they have returned to their country of origin (or with naturalized U.S. citizens) to their country of birth, finally, but not least important, do they plan to return to the U.S.A. Only with this information can ACA do an even more effective job in gaining equal rights and representation for U.S. expatriates!! **René Chapuis, Mettmenstetten, Switzerland.**

Is ANYONE in Washington listening to the Census problem? **Paul T. Cook, Germany.**

I want, like any responsible American, to be part of the count since my home is still in Washington, even though I've been abroad for many years. Also, most of my assets, including my retirement plan, are in Washington, or other states, and they contribute to the overall wealth of the U.S. economy. **Larry Crouch, (country representative, Surabaya, Indonesia) votes in Washington State.**

Out of sight, out of mind!--that seems to be the philosophy of the census determiners. **Fr. Angelo D'Agostino (country representative, Kenya) used to vote in D.C.**

It's hard to think of oneself as anything other than a second-class citizen when living abroad. We are stranded between cultures, and without being counted as part of America, our native homeland, we don't really count anywhere. **Charlotte De Witt, Switzerland.**

Taxation without representation seemed to be a hue and cry in '76. Why does it continue? **James Dodson (country representative, Madrid, Spain) votes in Illinois.**

I am proud to say that I am an absentee voter for the State of New York. I feel that we should be included in the census—we are proud to be New Yorkers and Americans, first and foremost. **Dorothy Dowling, United Kingdom.**

As American citizens working and living overseas we are subject to and do pay U.S. taxes, thus we do deserve to be counted in the U.S. census. To fail to count us is somewhat analogous to taxation without representation.

Many of us, as in my case, do sell various U.S.-made products to international consumers. Thus our marketing efforts do help to improve the U.S. balance of payments and the least the U.S. can do is to recognize our presence by counting us in the U.S. census.

In this highly developed electronic age, it should not be too great a task to put in place a verifiable program to assure that each of the U.S. citizens living abroad is counted in the next census. **D.P. Ebright, Küsnacht (Owner and C.E.O. of a Swiss marketing company) Switzerland.**

Better information is needed on the number of American citizens living abroad in order to increase their influence on American laws to insure fairness for all Americans. For the most part, we suffer taxation without representation. **Eicher, Cheserex, Switzerland.**

Would like to be included in the census as it is of vital importance to any American living overseas as part of their basic rights, like voting and paying taxes. **Nagwa El-Mallahk (country representative, Egypt) votes in California.**

We count! You can count on us. COUNT US! Don't count us out! Every American should count! The government of the people, by the people for the people should count ALL the people! I know I count! Mr. and Mrs. Congressman, Do you know? No American should be forgotten! Count us! **Roberta Enshede (country representative, The Netherlands) votes in Illinois, County of Cook.**

The census should include all American citizens regardless of their present location to provide as accurate a count as possible for purposes of taxation, allocation of resources and representation in Congress, etc. **Kathleen Farrington, Dublin, Ireland.**

If you claim the right to tax us, it's your duty/responsibility to count us. The right to tax goes hand in hand with a duty/responsibility to count those who are taxed. **Dale K.S. Finlayson (country representative, Scotland, United Kingdom) votes in New York City.**

Uncle Sam wants my taxes—I want to be counted for the privilege of paying my taxes from overseas. **Edward Patrick Flaherty (Executive Committee, Geneva, Switzerland) votes in Massachusetts.**

If U.S. citizens abroad are counted, they will have a louder voice in expressing their problems and wishes. **Warren Furth, Geneva, Switzerland.**

Not to be counted is not to count—yet for American business and politics abroad, we certainly do. (Not sure the average American appreciates that; I have trouble with my own brother!) **Kenneth Geiger, Geneva, Switzerland.**

If you're counting on the voter's vote, count the voter. **Rodger E. Giannico, Marseille, France, votes in California (San Francisco County).**

The inclusion of Americans abroad in the Census 2000 is not just one of voting and representation. It is also an economic issue of helping American companies identify and serve markets outside of the U.S. **Douglas Gilbert (country representative, Basel, Switzerland) votes in Colorado.**

U.S. policy decisions based on census data that do not include U.S. could be prone to error, even harmful. **Marianne Gunther, Geneva, Switzerland and U.S.A.**

It seems to me imperative that Americans be counted, wherever they may be living, with regard to the Census 2000. We are expected to pay taxes to our U.S.A.—in turn, we expect to be acknowledged and included when Americans, in general, are counted. Best wishes for us all. **Carol Halliday, Zürich, Switzerland.**

As an active (tax-paying, voting) U.S. citizen living abroad, I think it is essential that myself and other similarly situated citizens be accounted for in the census. This would provide better information for assessing the funding and servicing needs for our foreign service programs and provide a more complete and global picture of the breadth and depth of our diverse U.S. population. **Alan Harris, Herrliberg, Switzerland.**

Taxation without representation is tyranny! Just as good today as it was way back when. **Carole and Neil Henderson, Stockholm, Sweden.**

All Americans should count and therefore be in the count. **Darrell Huffman (country representative, New Zealand) votes in Ohio.**

Americans living abroad hold their heads high—they want to be counted. **Karl Jauch (Associate Executive Director at ACA) Geneva, Switzerland.**

I vote in New York. I pay taxes too. Please count me in!!! **Lois Bambi Kawashima, Tokyo, Japan.**

It would be nice to know we're valued for something other than paying taxes. **Ann King (country representative, Ireland) votes in Florida.**

It ain't fair not to be included in the census! **Robbin D. Knapp, Austria.**

Keep up the pressure for Census 2000. **Jack Kramer (Committee of U.S. Forces Retiree Association) United Kingdom.**

I think it is most important that Americans living abroad be counted in the census. Especially when there is a war going on close to where we are, we are the ones representing all of America. **Andrea Lorenzetti (country representative, Rome, Italy) votes in the state of New York (Kings County).**

No taxation without representation. **Marcella Meyer de Stadelhofen, Switzerland.**

We are Americans! Jovan Mirkovitch, Epalinges, Switzerland.

I vote in Florida. Just because I live in Brazil doesn't mean I've stopped being an American. I work to help Americans abroad as a U.S. Consular Agent. Don't I count?
Christine Moore Serrão, Brazil.

Keep on working to get us counted in Census 2000. We were last counted in the 1990 Census while living in Eugene, Oregon where we are registered to vote and continue to participate in all U.S. congressional and presidential elections. John and Milena Mulford Algsheim, France.

"No taxation without representation" was a founding principle of our nation. It strikes me as interesting that today the U.S. is the only country in the world that taxes its citizens overseas yet will not even count them in its census. William Oliver (country representative, Marbella, Spain) votes in Alabama.

It's amazing that our government would even consider NOT counting us! We EXIST!
Antoinette Larmore Ornati (country representative, Lombardy region of Italy) votes in New York.

I vote, I file taxes, so why not come full circle and include me when counting American citizens every ten years? It seems incredible that in this era of globalization the U.S. blatantly ignores its citizens overseas in this point. Gloria Otto (country representative, Hamburg Germany) votes in New York.

For equality with U.S. resident citizens since we pay the same income tax. John E. and Marian V. Pichione, Switzerland.

We are citizens, we can vote, we pay taxes to the United States and we should be counted and have representation in the House of Representatives and Senate. Janet Pinci, Italy.

I'm writing on behalf of my husband and myself. We vote in Texas, but currently reside in Sweden until, most likely, the end of 2000. Yes, we're gone, but we shouldn't be forgotten!
Bonnie M. and Gregory B. Rogers, Sweden.

The American Dream lives not within the borders of our country but within the heart and spirit of Americans everywhere. Max Rothman (country representative, Riviera, France) votes in New York.

If I'm citizen enough to pay taxes, I should be citizen enough to be counted as every other American is. Shannon Roxborough (country representative, Ethiopia) votes in Michigan.

Count on me for the 2000 census. Frederick Rumieri (country representative, Kaiserslautern, Germany) votes in Connecticut.

Please send additional copies (of a mail-in card regarding census inclusion). I intend to make many copies for mailing by my 'invisible' American friends here. Yes, we would like to be counted! Millicent Miller Sacio, Lima, Peru.

Surely for U.S. citizens residing outside of the U.S.A. and not being counted in the U.S. census, the basis for the allocation of the number of elected representatives in the U.S. House of Representatives; it is akin to such citizens being taxed without specific elected representation in the U.S. government. In other words, taxation without representation. Donald Shapiro (country representative, England) votes in New Jersey.

Is there any reason why not? Michael Stensrud, Zürich, Switzerland.

I am included in the census, therefore I am. Mark Stenzler (country representative, Zürich, Switzerland) votes in New York State.

Because I am still an American citizen even though I live in Switzerland. Aaron Sternfield, Morges, Switzerland.

We are here and not counted, except taxed. We need to make our presence known and then become more vocal. We are not an unimportant minority. Vernette Tiegs (registered nurse, U.S. Mission, Geneva) Begnins, Switzerland.

Power by numbers! Richard Tomkins, Geneva, Switzerland.

Often my Chinese friends ask me where I call home. . . I usually answer the one thing I know for sure is that I'm an American voting in Colorado. Finn S. Torjesen (country representative, Shanxi province, China).

In the hope that it would lead to more attention being paid to the concerns of citizens living abroad. Frederck Trezevant, Switzerland.

Basic practical and political rights flow from being counted. Americans abroad should no longer be shortchanged on their rights. Nicolas Ulmer (lawyer) Founex, Switzerland.

We two "U.S.A.ers" living in Lesotho, Southern Africa, plead for our federal government to be imaginative, even clever, and find a reasonably if not perfectly satisfactory way for us to be counted in next year's census. We would be attributable to our home state of Florida. . . . With most of us abroad duly counted, the resulting data should help ensure a rather more accurate picture of the U.S. citizen physical presence on this planet—a mission or purpose our census every 10 years ought to include. Jack and Carol Reilley Urner (country representatives, Lesotho) vote in Florida.

I'm still American. I'm just not living on American soil at the moment. I pay taxes, I'm in a retirement system, etc. I haven't vanished. Mical Visher, Geneva, Switzerland.

I am an American citizen and proud to be one. I loyally pay my taxes and I believe it is only fair that I should be counted as an American citizen. Jane von Salis, Switzerland.

Without us, the count is not correct and we are discriminated. Senta Waldvogel, 8200 Schaffhausen, Switzerland.

We pay taxes! We need representation! Louise Werbe, Pully, Switzerland.

I vote in the State of California. Overseas resident Americans have a unique viewpoint on many issues due to their immediate contacts within the communities of the world. Their numbers are not appreciated by the Congress and civil service without a census so their ability to represent their views is limited under our political system. This not only unfairly limits their franchise as citizens but also reduces the benefits that their insight into world political and economic systems would contribute to American society. Fred Westcott, Guatemala.

I lived in New York before moving abroad in 1990. I have voted there since moving. But if I (we) are not counted in the census, how will representation be allocated among the states? I seem to recall a simple but powerful slogan from America's birth—no taxation without representation. Every attempt should be made to include us in the next census. Philip Winegarner, Sweden.

Taxation without representation was a foundation of America. Today America is the only major country to tax non-resident citizens who also have no voice in the House or Senate. Surely non-resident citizens should be counted in a census. Kathryn P. Winter, Erlenbach, Switzerland.

Survey Respondents Indicating Support Without Comment:

Kathryn Boyer (country representative, Sweden) votes in Kansas.

Roland Crim (Executive Committee, Geneva, Switzerland) votes in California.

Edward J. Cupler, M.D. (Consultant Neurologist and Neuromuscular Diseases Specialist Director, Kingdom of Saudi Arabia) votes in Texas.

Donna Erismann, Schonenwerd, Switzerland.

B.B. Hanson, Geneva, Switzerland.

Belinda Ray (country representative, Calcutta, India) votes in West Virginia.

Robert M. Robbins (country representative, Philippines) votes in Texas.

Mark Szczeniowski, votes in New York State.

Barbi Tesch (country representative, Kuwait) votes in Florida.

Janet Weiler, Geneva, Switzerland, votes in Wisconsin.

Susan Wuest, Stockholm, Sweden.

Ms. VAN SCHOONEVELD. Thank you, Mr. Chairman, and the other distinguished members of the subcommittee for this opportunity to appear today.

Mr. MILLER. Thank you.

[The prepared statement of Ms. van Schooneveld follows:]

**TESTIMONY OF DOROTHY VAN SCHOONEVELD,
EXECUTIVE DIRECTOR OF AMERICAN CITIZENS ABROAD,
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON THE CENSUS
June 9, 1999**

Mr. Chairman, Honorable Members of the Subcommittee:

I am pleased and privileged to be able to address you today on an issue which is of great concern to Americans abroad.

My name is Dorothy van Schooneveld, and I am Executive Director of American Citizens Abroad (ACA), a non-profit organization founded in 1978 to represent the concerns of the uncounted millions of private American citizens residing outside the United States. I have flown here from Geneva, Switzerland, so that I can thank you for lending your eyes and ears to this presently "invisible" segment of the American population.

I would ask you to keep in mind that Congress granted overseas private citizens the right to register and vote absentee in federal elections almost a quarter century ago, with the passage of the Overseas Citizens Voting Rights Act of 1975. They vote in YOUR states, in YOUR districts. Some of them have helped elect you. If you care about representing all your constituents, and I know from experience that Members of Congress care deeply about their constituents, let them all be included in Census 2000, so that you (and others) know they exist.

Ironically, ever since overseas private Americans gained the right to register and vote absentee in federal elections, these overseas citizens have NEVER been included in a U.S. census count. We Americans abroad are thus in the paradoxical position of being told by our Government: "Your vote counts, but YOU don't!"

Who are we, these uncounted Americans?

I am an American lawyer (member of the Indiana and Illinois bars), presently employed by the World Health Organization. I have lived abroad for a dozen years now.

For the last seven years I have been volunteering my services to American Citizens Abroad. I have personally corresponded with literally thousands of Americans, from Nepal to New Guinea to Brazil to Iceland – and countless places in between.

Americans residing abroad share many of the characteristics of their fellow citizens at home. They are your parents, relatives, neighbors, and friends who, for shorter or longer periods, are representing our nation abroad and its industries, schools, churches, labor unions, charitable organizations, banks, and factories. They represent – just as do their families and friends at home – a talented and varied mix of our national heritage: American students working their way through school; mothers working part-time; American men and women of

commerce and finance traveling internationally, to trade, build and invest for the benefit of American industries, towns, cities and states; retired military personnel and their families; senior citizens living in sunny areas; American actors, painters and musicians spreading our culture to every corner of the globe; and scientists and teachers working to improve the quality of life for all of us.

These overseas Americans are loyal, patriotic U.S. citizens who can vote in your districts and are subject to federal taxation. They constitute an asset to their country by spreading American democratic ideals and cultural values in their foreign communities, exemplifying the American way of life and, incidentally, buying and selling a substantial amount of American products. They are in a very real sense our best ambassadors abroad.

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I would like to address specifically how my organization, American Citizens Abroad, and other organizations of private Americans abroad, could play a partnership role in helping attain a meaningful count of private overseas Americans in Census 2000. ACA regularly collaborates with U.S. embassies and consulates and with the Defense Department's Federal Voting Assistance Program in circulating FPCAs and other U.S. Government information to citizens around the world. We are prepared to join with the Census Bureau in applying to Census 2000 many of the same highly successful techniques that we have honed all over the world for several decades.

ACA itself has a mailing list of close to 9,000 Americans and American schools, groups, organizations, members of the press and consular posts worldwide. Many of these recipients in turn disseminate information in our hard copy publications to their memberships and readerships.

In addition to its hard cover publications, ACA would devote space on its Web site (www.aca.ch) to promote Census 2000 and would send bulletins to the broad cyberspace network which receives ACA's bi-weekly online newsletter.

And finally, ACA's entire worldwide system of country representatives (presently more than 60 contact persons in over 40 countries on 6 continents) would be actively involved in encouraging participation in Census 2000 in their regions. Other American voluntary associations represented here today would surely be as active as ACA.

In closing, I would like to say the following: I cannot underscore strongly enough the positive emotional message America would send by including overseas private Americans in Census 2000: "We know you are there, and we care!"

With your permission, Mr. Chairman, I would like to enter into the record a collection of short statements on Census 2000 that ACA has received in recent weeks from overseas private citizens around the world.

Thank you, Mr. Chairman, and the other distinguished members of the Subcommittee, for this opportunity to appear today.

**APPENDIX TO
TESTIMONY OF DOROTHY VAN SCHOONEVELD,
EXECUTIVE DIRECTOR OF AMERICAN CITIZENS ABROAD,
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June 9, 1999**

Mr. MILLER. And we will now have Mr. Smallhoover. It is in nice bipartisan fashion that we are in agreement as far as a goal and objective. Mr. Smallhoover.

Mr. SMALLHOOVER. Mr. Chairman, Mrs. Maloney, I thank you very much for giving us the opportunity to testify today. My name is Joseph Smallhoover. I am an American lawyer practicing my profession in Paris, France. I am also the elected chair of Democrats Abroad, the official arm of the Democratic party overseas.

This is one of the very rare times that all of the main organizations representing Americans abroad are able to address a congressional committee on any issue of major concern to us, and this is certainly the first time we have been asked to testify at all about such an important question as the census.

The Democrats Abroad global convention held in Toronto, Canada, on April 28, 1996, unanimously adopted a resolution urging that "all appropriate government action be undertaken to include American citizens residing abroad, either permanently or temporarily, in the census." Moreover, Democrats Abroad recently adopted a unanimous resolution, calling on Congress "to provide an adequate budget to include all Americans in the 2000 census, including Americans abroad and to direct the Commerce Department to take all steps feasible to these ends."

Indeed, we Democrats residing abroad, like the thousands of members of the organizations represented today in the Census 2000 Coalition, believe that it is important, for a host of reasons, that we be counted in the census 2000.

Mr. Chairman, one could legitimately ask why Americans abroad want to be included in the census count. It is, first of all, a feeling of belonging to the American nation, of being part of the American people, of wanting not to be ignored by our own government.

We are patriotic American citizens. We file our income tax returns and pay taxes in the United States. We vote in Federal elections. But when it comes to counting the entire American population, the Census Bureau does not think that we should be taken into account. I believe, Democrats Abroad believes, that every American, whether Democrat or Republican or independent politically, wholeheartedly agrees with the recent statement of Vice President Gore that, "It is vitally important that we count every American for one simple reason: Every single American counts."

While the patriotic impact of including Americans abroad in census 2000 cannot be overestimated, there are also a number of practical considerations which compel us to ask for our inclusion in the census count. Americans abroad promote democratic ideals and policies, individual liberty, free enterprise, the American way of life, and last, but not least, American exports. We constitute a valuable national asset, one that many other nations understand and promote but one which the greatest democracy on Earth seems to denigrate.

Of course, it is easy to understand how our contribution and our importance are underestimated since no one knows for sure exactly how many of us there are or where we reside. How can the U.S. Government effectively deal with issues, such as the impact we have on trade, if it does not know how many of us there are or what we do? How can the consulates and embassies deal effectively

with the services they must provide to us if they do not know the number of Americans living in the country or how many the consulate or embassy serves? How can the Federal or State governments get a firm idea of the voter participation in elections if they do not know the full extent of the potential voter pool?

How many American citizens actually live abroad? Since we don't get counted by the Census Bureau, your guess is as good as ours. Nevertheless, here are a few figures. In 1989, the State Department estimated the population of U.S. citizens abroad, excluding the military, to be 2.2 million but incredibly put the same figure at an estimated 6.3 million just 3 years later in 1992.

Even more surprising, in 1993 the State Department estimate of private American citizens residing abroad, that is, not including U.S. Government and military and civilian employees and their dependents, was reduced to 2.6 million. In 1997, the estimate was 3.2. Absent huge and otherwise undetected population shifts, there is something wrong with these numbers.

Based on our cumulative experience and activity within our communities, we have reason to believe that the recent figures are serious underestimates. Estimates of American organizations abroad vary between 3 and 6 million. The truth, Mr. Chairman, is that nobody knows. Has the time not come for the greatest Nation on Earth, with millions of its citizens abroad, to undertake a reasonably accurate count of this population?

The current exclusion of private American citizens residing abroad from the national census raises an interesting legal issue. Since the census is constitutionally mandated for the purpose of achieving an equitable representation in Congress of the populations of the several States, the question naturally arises whether it can ignore the existence of certain citizens entitled to vote for Congress and represented in the House of Representatives in the same manner as other citizens.

Congress decided nearly 25 years ago that Americans abroad are entitled to vote in Federal elections in the States and in the congressional districts in which they last resided. We are thus treated for the purpose of congressional elections as if we are residents of those States and districts.

It appears to us, therefore, we should be included in the census in order to achieve the equitable apportionment of representatives among the several States. Congress and the Census Bureau must have recognized the validity of this reasoning. As stated by the Census Bureau, "For the 1990 census, as a result of strong bipartisan support in the U.S. Congress, selected components of the overseas population were included in the State population counts for purposes of calculating congressional apportionment. The selected components of the overseas population referred to by the Census Bureau were members of the Armed Forces, Federal civilian employees and their dependents who, we are informed by the Census Bureau, will be counted again in census 2000.

There is hardly a decision of the Bureau which rankles private American citizens abroad more than this one. It seems to demonstrate to us that for the Census Bureau, private American citizens are not as valuable as those employed by the Federal Government. By what right, law, or constitutional provision are federally

employed Americans residing abroad so privileged to be taken into account and calculated in the congressional apportionment, while private American citizens with the same rights and obligations as citizens of the United States are ignored.

Surely, there is something wrong here. The Census Bureau's reply has been that while it is easy to count federally affiliated citizens on the basis of the official administrative records, enumerating private U.S. citizens abroad amounts to a technical impossibility. It cites, as proof, the experience of the 1960 and 1970 censuses in which the Census Bureau attempted to count private American citizens.

For several reasons, private U.S. citizens were vastly undercounted in those censuses. Many Americans abroad were not even aware that the census was under way. Others were unable to get to a U.S. embassy or consulate to attain necessary forms. These offices had no way of distributing the census forms, except where Americans came to them voluntarily to obtain them. Moreover, involvement at the embassies and consulates was voluntary, with no funding support from either the State Department or the Census Bureau and thus, more than likely, the undercounts differed substantially from one geographic area to the other.

Inclusion of private Americans abroad in census 2000 would be an entirely different matter. Americans abroad have now been and will continue to be sensitized to the importance of this issue as evidenced by the stance taken by the main organizations represented in the Census 2000 Coalition, some of which did not even exist in 1970. In the year 2000 our organizations do the lion's share of the work by publicizing the census, distributing specially prepared overseas citizen census cards and helping to collect them and return them to the Census Bureau, directly or through U.S. embassies or consulates.

In other words, the process would be essentially the same as that which has been used successfully for more than two decades for the distribution and collection of Federal Postcard Application forms, which allow Americans abroad to register to vote by absentee ballot.

Mr. Chairman, the testimony of the other witnesses representing the Census 2000 Coalition should effectively rebut the various objections expressed by the Census Bureau. My testimony shows, I hope, the inclusion of overseas private citizens in census 2000 is indeed feasible on the basis of objective and verifiable information.

Admittedly, counting private Americans abroad is more difficult than counting federally affiliated Americans; but as the coalition has shown, it can be done. Such a count would not be 100 percent complete, but the fact that the 1990 census missed 8.4 million persons and miscounted another 4.4 million did not invalidate the census or result in its being discarded.

The overseas American community stands ready to ensure the maximum amount of participation in the census of overseas Americans. The American organizations abroad are committed to every possible effort to get all Americans abroad counted in the census 2000.

If the census group would join in this commitment, it would be possible to obtain a reasonably comprehensive, objective and verifi

able account of these citizens. Mr. Chairman, the level of commitment on the part of the Census Bureau can be expected only if the committee and the whole House of Representatives direct the Bureau of the Census in no uncertain terms to include all Americans residing abroad in census 2000. On behalf of Democrats Abroad, I strongly urge you to take this step. Give us the chance, and we will see that the job gets done and that it gets done correctly.

Thank you, Mr. Chairman, Mrs. Maloney.

[The prepared statement of Mr. Smallhoover follows:]

**TESTIMONY OF JOSEPH SMALLHOOVER,
CHAIR OF DEMOCRATS ABROAD
AND DEMOCRATIC NATIONAL COMMITTEE MEMBER,
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON THE CENSUS
June 9, 1999**

Mr. Chairman, Members of the Subcommittee, I would like to thank the Subcommittee for giving me the opportunity to testify today.

My name is Joseph Smallhoover. I am an American lawyer living and practicing my profession in Paris, France. I am also the elected Chair of Democrats Abroad, the official arm abroad of the Democratic Party, and a member of the Democratic National Committee. As you are no doubt aware, Democrats Abroad is treated as a state party committee by the Democratic National Committee. We have local committees or representatives in 35 countries around the world, located in most of the areas where there is a high concentration of American overseas residents. I believe that this is the one of the very rare times that all main organizations representing Americans abroad are able to address a congressional committee on an issue of major concern to us, and this is certainly the first time that we have been asked to testify on the important question of the inclusion of Americans abroad in the decennial census.

The Democrats Abroad Global Convention held in Toronto, Canada, on April 28, 1996, unanimously adopted a resolution urging that "all appropriate government action be undertaken to include American citizens residing abroad, either permanently or temporarily, in the census." Moreover, Democrats Abroad recently adopted a unanimous resolution calling on Congress "to provide an adequate budget to include all Americans in the 2000 Census, including Americans abroad" and "to direct the Commerce Department to take all steps feasible to these ends."

Indeed, we Democrats residing abroad, like the thousands of members of the organizations represented today in the Census 2000 Coalition, believe that it is important for a host of reasons that we be counted in Census 2000.

Mr. Chairman, one could legitimately ask why Americans abroad want to be included in the census count. It is, first of all, a feeling of belonging to the American nation, of being part of the American people, of wanting not to be ignored by our own government.

We are patriotic American citizens. We file our income tax returns, pay taxes in the United States, and vote in federal elections (in the congressional districts in which we last resided before moving overseas). But when it comes to counting the entire American population, the Census Bureau does not think we should be taken into account, and indeed, deliberately ignores us. If the Census Bureau counts aliens, convicted felons and persons committed to

mental institutions who do not have the right to vote, should it not also count the millions of Americans abroad who do have the right to vote?

I believe, Democrats Abroad believes, that every American, whether Democrat or Republican or independent politically, wholeheartedly agrees with the recent statement of Vice President Gore that "it is vitally important that we count every American for one simple reason: every single American counts."

While the patriotic impact of including Americans abroad in Census 2000 cannot be overestimated, there are also a number of practical considerations which impel us to ask for our inclusion in the census count. Americans abroad promote democratic ideals and policies, individual liberty, free enterprise, the American way of life and, last but not least, American exports. We constitute a valuable national asset, one that many other nations understand and promote, but one which the greatest democracy on Earth seems to denigrate.

Of course, it is easy to understand how our contribution and our importance are underestimated, since no one knows for sure exactly how many of us there are and where we reside. How can the U.S. government effectively deal with issues such as the impact we have on trade, if it does not know how many of us there are or what we do? How can the consulates and embassies deal effectively with the services they must provide—and they are very few, I might add—to overseas Americans, if they do not know the number of Americans living in the country the consulate or embassy serves? How can the federal and state government get a firm idea of voter participation in elections, if they do not know the full extent of the potential voter pool?

How many private U.S. citizens actually live abroad? Since we do not get counted by the Census Bureau, your guess is as good as ours. Nevertheless, here are a few figures: In 1989 the State Department estimated the population of U.S. citizens abroad, excluding the military, to be 2.2 million, but, incredibly, put the same figure at an estimated 6.3 million just three years later in 1992 (see, Statistical Abstract, 1991, p. 7; Statistical Abstract, 1992, p. 9). Even more surprising, in 1993 the State Department estimate of private American citizens residing abroad (that is, not including U.S. government—military and civilian—employees and their dependents) was reduced to 2.6 million, and in 1997 the estimate was 3.2 million. Absent huge and otherwise undetected population shifts, there is something wrong with these numbers.

Based on our cumulative experience and activity within our communities, we have reason to believe that the recent figures are serious underestimates. Estimates of American organizations abroad vary between three and six million. The truth is, Mr. Chairman, that nobody knows. Has the time not come for the greatest nation on earth, with millions of its citizens abroad, to undertake a reasonably accurate count of this population?

The current exclusion of private American citizens residing abroad from the national census raises an interesting legal issue. Since the census is constitutionally mandated for the purpose of achieving an equitable representation in Congress of the populations of the several States, the question naturally arises whether it can ignore the existence of certain citizens entitled to vote for Congress and represented in the House of Representatives in the same manner as other citizens. Congress decided nearly 25 years ago that Americans abroad are entitled to vote in federal elections in the states and in the congressional districts in which they last resided. We are

thus treated for the purpose of congressional elections as if we were residents of those states and districts. It appears to us, therefore, that we should be included in the census in order to achieve the equitable apportionment of Representatives among the several states.

Congress and the Census Bureau must have recognized the validity of this reasoning. As stated by the Census Bureau, "for the 1990 census, as a result of strong bipartisan support in the U.S. Congress, selected components of the overseas population were included in the state population counts for purposes of calculating congressional apportionment." The "selected components of the overseas population" were members of the Armed Forces, federal civilian employees and their dependents, who, we are informed by the Census Bureau, will again be counted in Census 2000.

There is hardly a decision of the Bureau which rankles private American citizens abroad more than this one. It seems to demonstrate to us that for the Census Bureau, private Americans are not as valuable as those employed by the government. It results in the anomalous situation that while a federal employee may be abroad for several years, even for a whole career except for brief assignments at home, and still be included in the census, a private American who has been abroad for less than a year will not be so privileged.

By what right, law or constitutional provision are federally employed Americans residing abroad so privileged to be taken into account in calculating congressional apportionment, while private Americans residing abroad, with the same rights and obligations as citizens of the United States, are ignored? Surely there is something wrong here.

The Census Bureau's reply has been that while it is easy to count federally-affiliated U.S. citizens abroad on the basis of official, administrative records, enumerating private U.S. citizens abroad amounts to a technical impossibility. It cites as proof the experience of the 1960 and 1970 censuses, in which the Census Bureau attempted to count private Americans abroad.

For several reasons, private U.S. citizens abroad were vastly undercounted in the 1960 and 1970 censuses. Many Americans abroad were not even aware that a census was underway. Others were unable to get to a U.S. embassy or consulate to obtain the census form. These offices had no way of distributing census forms except when Americans came there voluntarily to obtain them. Moreover, involvement of the embassies and consulates was voluntary, with no funding support from either the State Department or the Census Bureau, and thus, more than likely, the undercounts differed substantially from one geographic area to another.

Inclusion of private Americans abroad in Census 2000 would be an entirely different matter. Americans abroad have now been, and will continue to be, sensitized to the importance of this issue, as evidenced by the stance taken by the main American organizations represented in the Census 2000 Coalition, some of which did not even exist in 1970. In 1960 and 1970, private Americans residing abroad were not even assured the right to vote absentee in federal elections.

In the year 2000, the organizations and associations of Americans abroad would do the lion's share of the work of publicizing the census, distributing specially prepared Overseas Citizen Census Cards (OCCCs), and helping to collect them and return them to the Census Bureau directly or through U.S. embassies and consulates. In other words, the process would be essentially the same as that which has been used successfully for more than two decades for the distribution and collection of the Federal Post Card Application (FPCA), which allows Americans abroad to register to vote by absentee ballot.

Mr. Chairman, the testimony of other witnesses representing the Census 2000 Coalition effectively rebuts the various objections expressed by the Census Bureau. My testimony shows that inclusion of overseas private citizens in Census 2000 is indeed feasible on the basis of objective and verifiable information.

Admittedly, counting private Americans abroad is more difficult than counting federally-affiliated Americans, but, as the Coalition has shown, it can be done. Such a count would not be 100 per cent complete, but the fact that the 1990 census missed 8.4 million persons and 4.4 million others in the United States were counted incorrectly did not result in the whole census being declared invalid and discarded.

The overseas American community stands ready to ensure the maximum amount of participation in a census of overseas Americans. The American organizations abroad are committed to making every possible effort to get all private Americans abroad counted in Census 2000. If the Census Bureau would join in this commitment, it would be possible to obtain a reasonably comprehensive, objective and verifiable count of these citizens.

Mr. Chairman, that level of commitment on the part of the Census Bureau can be expected only if this Committee and the whole House of Representatives direct the Bureau of the Census in no uncertain terms to include all American citizens residing abroad in Census 2000. On behalf of Democrats Abroad, I strongly urge you to take this step. Give us the chance, and we will see that the job gets done—and right.

Thank you, Mr. Chairman. Thank you, members of the Subcommittee.

Mr. MILLER. I thank all five of you for your verifying testimony today. We appreciate that many of you came long distances to be here today. We appreciate that very much.

Let me say, first of all, that I regret also that the Bureau has not come up with a plan to count U.S. citizens living overseas. It is unfortunate at this late date we don't have a plan. It is unexcuseable to me. This goes back many years. It is not necessarily Dr. Prewitt, who just joined the Bureau September or October of last year.

As we become more of a global economy, and all of you are involved in that in one way or another, it is going to become an even bigger issue as we go through. We need to address the issue.

Mr. Smallhoover, you addressed the question. Maybe someone else can respond to that. I am impressed that you all are willing to come this far and go through this much effort on this issue. So many people are involved in the census. We heard Mr. Ryan concerned about Wisconsin. Mrs. Maloney's State of New York, may lose two seats in Congress. Mr. Davis is concerned about the city of Chicago and the amount of Federal dollars that may flow there. Everybody has a reason to have an interest. I haven't figured out the reason that motivates you, except just being good citizens and proud of your citizenship.

Is there something more there?

Mr. SMALLHOOVER. May I answer that, Mr. Miller. It is right behind you. Right there. That flag.

Mr. MILLER. Anyone else?

Mr. GRIBBLE. In the business council, the chamber of commerce, to sit down and try and make a trade bottom-line relation between being in the census and not being in the census, you can't do it, but everybody has said they want to be counted. They want to be full-up regular Americans. Again, it is our citizenship. It is our patriotism. That is the bottom line.

Mr. JOHNSON. Also, we feel if we vote that we should have some representation in the House of Representatives, and we are invisible to that count at the present time.

Mr. HAMOD. Mr. Chairman, I also might be able to provide some historical perspective. We see this as a continuum. For years Americans overseas have fought to enjoy the same rights as Americans here at home, and I will give you just a few instances if the subcommittee will permit.

For example, for many years, for American children born overseas, in order to get the U.S. citizenship, the appropriate naturalization, their parents had to quit their jobs and move back to the United States in order to become Americans. Well, with the help of Congress, we changed that. Let me give you another example. For example, for many years the U.S. laws said that the only people who could work in American embassies overseas and consulates overseas were foreign service officers and spouses, that other Americans could not. Ironically, anybody else in the world could take those jobs but not Americans and thankfully Congress stepped in and the law has been changed. I will give you just one more example. I could give you many of them, but for example, when the DOD schools, the Department of Defense schools, were shutting down in Eastern Europe earlier in the 1990's, they had many books and the

laws on the books said you either have to burn these books or send them back to the United States.

And this was at a time when the State Department schools and the American and international schools overseas were desperate for books; and thankfully, once again, Congress stepped in and said this doesn't make any sense. It is time to change the law. And we see this as just one more step in an ongoing process to say this is a no-brainer.

It doesn't make sense what we are doing now. Let's change the laws, and we welcome the opportunity to work with the subcommittee and the whole Congress to do that.

Mr. MILLER. Mr. Hamod, you are the Census 2000 Coalition. Explain to me what that organization is.

Mr. HAMOD. This is an ad hoc organization that has come together in recent months. It includes the two main political groups overseas, Republicans Abroad and Democrats Abroad. It includes all of the major American chamber of commerce organizations overseas.

There are four of them. One in Asia Pacific, one in Latin America, one in Europe, and one in the Persian Gulf. It also includes the major American citizens groups overseas. Again, it is an ad hoc effort. Three months ago, we didn't exist. We have come together, all of us volunteering our time, because this is an issue that is important to us. And we are very grateful to the subcommittee for the opportunity to make our case today.

Mr. MILLER. I think a couple of concerns I have is the largest population of people overseas would probably be Canada and Mexico, I am assuming. Probably overwhelming, I am sure, the majority of the total. I am guessing. And that is going to be even more difficult because passports aren't necessarily required, I guess.

I know you can visit those countries or the Bahamas without a passport. You need a birth certificate. You get into problems with large numbers along the Canadian border and Mexican border. It is not an easy job.

I am going to have some more questions, but I think we will do a second round. Let me ask Mrs. Maloney to proceed.

Mrs. MALONEY. First of all, I would like to thank all of you for coming to our hearing. You probably came from a farther point than most people than we have, and I want to thank you for your tremendously well thought out presentations with ideas of how to tackle getting a count of Americans abroad.

This is one issue that we agree on. Regrettably, the Census Committee has been among the most partisan in Congress; but this is one that Mr. Miller and I have had several conversations on and agreed that it should be done.

And actually, there has been some criticism that the Census Bureau didn't come forward with this particular plan on how to take care of this, but on the other hand, you could say that this committee actually should have had hearings and taken steps for Americans abroad earlier than we have. As you know, we are coming right up to the census, to census day very quickly and time is planned, as Dr. Prewitt has said on numerous occasions before this committee.

Every day and every second is planned, and I believe we all agree, including Dr. Prewitt, that we should support and work toward counting all Americans abroad. He has stated that he cannot get it done for the 2000 census. I have prepared legislation, and I hope all of you will look at it. I would like to hear your thoughts on it, on calling for a special survey of American citizens overseas by 2002, not connected with the decennial census, and that that special survey could be used to help make decisions about the 2010 census.

In fact, as I mentioned in my opening statement, I would ask all of you to comment on it and look at it. I would like to just go down and hear your comments on it. I have a series of questions. In fact, if I don't get a chance to ask all of them, I would like to get them to you in writing.

Should overseas Americans be included for all other purposes as well, not just for apportionment, but say, the redistricting or Federal funds distribution? What are your feelings on that? Do you think Americans abroad should be used in the Federal fund distribution formulas and for redistricting and apportionment?

Mr. GRIBBLE. I certainly wouldn't want to dictate to all the various legislatures around the country as to how they want to handle redistricting, but I certainly feel, as far as allocation of Federal funds, yes. If there is a bottom line, if there is a business related thing in this entire issue, again, my tax dollars have been going to the Federal Government and not counting in the State of Florida, in the county of Flagler, in the city of Ormond Beach, for 5 years now since I have been out of the military.

That is not right. Why shouldn't I have the same rights to Federal infrastructure, federally supported infrastructure, as everybody else that is living there now.

Mrs. MALONEY. Do you think each overseas American should be designated to a specific address or just to a State or maybe a city and State? How do you think they should be counted?

Mr. HAMOD. Mrs. Maloney, I would like to, if I may, and Mr. Chairman, your eyes did not deceive you, there are six of us here. With the subcommittee's permission, we'd like to introduce another of our colleagues, Gene Marans, with the law firm of Cleary, Gottlieb, who is doing pro bono work. If the committee permits, we'd like to open up to questions for him as well, with your permission.

Mr. MILLER. Identify yourself, if you would.

Mr. MARANS. I'm Eugene Marans. I am in the Washington office law firm of Cleary, Gottlieb, Steen & Hamilton, and we were involved 25 years ago also in helping obtain the legislation that assures overseas Americans the right to register and vote absentee in Federal elections in their last State of residence in the United States.

In response to Congresswoman Maloney's question, if one looks at the form that is displayed now, which says unofficial draft clearly on top, I apologize again for that, the third column says State or other U.S. jurisdiction of last residence in the United States. So, the proposal is just to show the last State and not the hometown or home county address.

Mrs. MALONEY. So, you all agree it should just be the State, not the specific address?

Mr. HAMOD. The position of the coalition, at this point, is we believe that it would be very helpful to go down to the district level. We also recognize that it would be a challenge operationally. Having said that, we welcome the opportunity to work with the Census Bureau and the subcommittee to explore these opportunities.

Mrs. MALONEY. My time is up, but I have one last question. I have actually a series of questions, but I want to ask you, do you think there should be a time limit? What if a person hasn't lived in the United States for 20 years or 5 years or 15 years? Should it make any difference if people declare that they never intend to return to the United States?

These are the people representing the Americans abroad. I would like to hear from them before I hear from an American living here. I mean, this is the purpose of the panel.

Mr. JOHNSON. Could we say we never intend to pay taxes or to vote?

Mrs. MALONEY. Most Americans abroad are very patriotic citizens and great Ambassadors for our country, but some Americans have become exiles. They leave because they don't like the country and they are not supportive of the country.

I just want to say one thing. I think one thing that you raised, Mr. Hamod, in your remarks, really all of you did, is how we are really moving to a world committee and there will be, as trade increases, more and more Americans abroad. And this is a very, very important point, and I truly do believe that you are the best Ambassadors we can have as you are in the different countries on our values and our system of government.

But this whole thing about time, exiles, and how you treat these people? Can you answer.

Ms. VAN SCHOONEVELD. I would like to speak on that, if I may. I hate the term exiles, if I may. I know a number of Americans who have lived 30, 40, 50 years abroad and still are extremely proud of the flag and of their nationality. I don't think you can draw any arbitrary line where patriotism starts or stops.

I think you'll find many Americans within the United States who do not participate in the governmental process and are not interested in voting and certainly are not interested in paying their taxes. We are not claiming to be better than any Americans in the United States. What we are fighting against is the reputation of being worse than Americans in the United States. We just want to be on an equal basis with Americans in the United States, including being counted in the census.

Mrs. MALONEY. Other comments? Do you think they should have to pay taxes?

Mr. HAMOD. Absolutely. It is the law.

Mrs. MALONEY. What about an exile, one who denounces their government, would they be counted?

Mr. GRIBBLE. If they've given up their citizenship, they are not American citizens. If they carry a passport, they are American citizens. In Kuwait, there are different classes of citizens. There are people who are allowed to vote and people who are not allowed to vote. There are people who get certain benefits and people who don't get those benefits.

We don't have that in America. I don't think we should have anything that allows us to have even a semblance of that happening in America. If you carry a U.S. passport, if you are a U.S. citizen, you fulfill your obligations to the country and pay your taxes, you make a choice whether to vote or not to vote; but we don't assign levels of citizenship, and yet the Census Bureau does in a de facto manner.

Mrs. MALONEY. May I ask another one?

Mr. MILLER. Let me go, and then we can go back. Who of the panel has worked with the Census Bureau over the past years? Any of you had meetings with the Census Bureau? I know they've had meetings with representatives of citizens living abroad.

Mr. JOHNSON. I have had correspondence with them, several pieces of paper.

Mr. MILLER. I know there have been groups that met with me in the past year or so, but I don't know if anyone here specifically had.

One of the arguments the Bureau used a little while ago was that a voluntary one is not statistically valid. That is the argument: how do you get a statistically valid count and is it proportionately distributed properly within the States? That is a problem.

The cost question came up and just to let you know, we are going to spend over \$6 billion on the census this time around. This Congress and the previous Congresses have given all the money that the Census Bureau needs. We're spending \$1 billion this current year just getting ready for the census.

While it would cost money, I think we all said as a constitutional requirement that we count everybody. And we should put all the efforts and resources into the actual count as necessary. And so I don't think cost is an excuse, and I don't think the Bureau would. It is a legitimate question to raise, but it is not an excuse.

I saw a number. It was 750,000 overseas people voted; is that right? Are you familiar with that number? Is it 750,000 non-military, non-government? How does that system work, this voting by card? You have to register to vote in a specific county or parish; is that right?

Mr. GRIBBLE. It depends on the individual State laws for voting in the local elections. They all have different requirements. They have different requirements obviously on establishing legal residence there for the right to vote. You fill out the form. You attest to it based on what the requirements are in that State. Sometimes it has to be attested to in front of a notary. Consular officers in some States is not required.

The Federal Postcard Application basically allows you to do the registration and also request a ballot. You get a normal absentee ballot from the State. In fact, in the State of Florida, when I go in for my absentee ballot, they hand it to you. If you are there to physically pick it up ahead of the election, they just make you vote ahead of time, and they hold it till the day of election. It varies from State to State.

Mr. MILLER. Can you register just for a State election, or do you need to register like in Ormond Beach to vote for city council, on the school board and everything?

Mr. GRIBBLE. It depends on the State.

Mr. MILLER. Some States allow—a generic State—it would be difficult living overseas to decide school board races and such.

Mr. SMALLHOOVER. It depends a great deal on the State. Some States will allow you to register only for Federal elections. Other States will allow you to register for both.

Some States can tax us when we vote in Federal elections overseas citizens but they can tax overseas citizens if they vote in State elections and some States don't tax. It is sort of you've got 50 choices, and you pick and choose.

Mr. MARANS. With your permission, Mrs. Maloney, to clarify this point, the Federal law that was passed in 1975 requires every State to allow every overseas citizen to vote in Federal elections in their State of last residence in the United States.

It does not require the States to allow overseas residents to vote in State and local elections, unless that's permitted under State law. There is something else that the legislation provides. It says that overseas American citizens should not have their voting in Federal elections be taken into account for State and local tax purposes.

Overseas citizens are subject to Federal taxation, but the fact that they would vote for Mrs. Maloney or for Mr. Miller in the congressional election in a particular State doesn't mean they would necessarily have to pay county taxes in Ormond. But if they wanted to vote for State elections in Florida, Florida may decide they should be subject to State taxes.

There is both a Federal ballot and a non-Federal ballot, a complete ballot, but anyone can get a Federal ballot who's an overseas citizen and can show that he or she has a last State of residence in the particular State.

Mr. MILLER. Does anyone know the number of registered voters overseas?

Mr. SMALLHOOVER. Nobody knows that number.

Mr. MARANS. Actually, the concept of registered voter is a little different for overseas citizens because many States regard this process as a re-registration every time the card comes in, rather than keeping overseas voters on particular rolls on a continuing basis. So the card is a combination registration and request for ballot.

Mr. MILLER. Thank you. Mrs. Maloney.

Mrs. MALONEY. Can you tell us if you reviewed how the Bureau attempted to enumerate U.S. citizens living abroad during the 1970 census? Did any of you work with the Bureau on this effort? And do you consider that effort a success? I understand that in the 1970 census, the Bureau published a figure of 1,700,000 for the population abroad, and do you believe that that is an accurate number? If not, how inaccurate do you think it is? Comments from the abroad citizens.

Ms. VAN SCHOONEVELD. I think Mr. Smallhoover addressed that quite a bit in his presentation. Why don't you go ahead?

Mr. SMALLHOOVER. Thank you. I was not overseas in 1970, so I can't say whether they did a good job. The one thing that is clear from the State Department's numbers is that every time anyone tries to put together a number—because things haven't been done on a proper basis—that number is simply wrong.

Now, there is a report that was done in 1992, by Ms. Mills from the Census Bureau about those census efforts, which talked about how they were conducted and the various flaws that she saw in them.

One of the major things was, in fact, was that there wasn't funding. The American overseas community was a different entity at the time. In 1960 and 1970, Americans abroad did not have the right to vote in Federal elections guaranteed by Federal law. It wasn't until 1975 that that right was granted to us. Through the last 25 years we have, as groups at various organizations, been very good at increasing the number of Americans abroad who participate in the American political system.

So, maybe in 1970 the number they put together was probably 1.7. My guess is that even then that was an incorrect number. Today, we have a vague idea how much it is.

We don't really know until we get counted, but what we do know, is that our experience with each election in getting people to come out to vote and getting the community overseas to understand the simple fact that because they are overseas does not mean that they are not Americans. The fact that they are overseas doesn't mean they can't participate in the process. It is a very real thing; and it is quite likely that with an effort by organizations, we can be very helpful in expediting the process.

Mrs. MALONEY. One of your recommendations that came from your organization is to create a self-reporting form which American citizens could pick up from embassies or the Internet or wherever.

If there is self-reporting, I have a concern that many States may start lobbying efforts in an attempt to get the overseas population to self-identify with their particular States. The determination of the last seat in the House often turns on very, very small numbers. A lot of our elections are very close too, by the way, so this could make a difference conceivably, and can you comment on this concern?

Mr. HAMOD. Did it happen in 1970? To the best of my knowledge, no. And it is possible that States would undertake a lobbying effort to get their people overseas to do that, but we believe it is highly unlikely.

Mrs. MALONEY. Let the members talk before the lawyer talks. They have come a long ways to be here.

Mr. SMALLHOOVER. Let me in a slightly more discordant voice than the coalition, repeat what David just said. We saw this morning in one of the bills that Wisconsin is very concerned about counting possibly 10,000 people who may have moved one way or the other.

Now, I don't know that they are going to bother to start sending out fliers to all of the University of Wisconsin alumni to find out where they are, but the answer is, we don't have any way to tell you whether a State will start lobbying to find us. In fact, in a way, it would be great if they tried to find us, but we have no way of knowing. Maybe Mrs. Maloney in New York should consider it. You are likely to lose a couple of seats, I think.

Mrs. MALONEY. In addition, if the enumeration is completely voluntary and there is no documentation needed to prove State ties, could imaginary people be created? We hear a lot of concerns about

manipulation of the data. Should we worry about manipulation of the overseas American count?

Ms. VAN SCHOONEVELD. I am eternally distressed to hear of the constant distress. I understand that verification is a very important concept, particularly when amassing statistical data.

However, I must also confess to you and, probably the others feel the same, that as Americans abroad, we are constantly put a bit on the defensive because there is always this feeling: because you are on foreign soil, how can we be sure you are honest?

The form, as we have designed it, does give space for the passport numbers. Since those could be verified via the State Department, I don't see there should be additional problems.

Mrs. MALONEY. Anyone else like to comment?

Mr. HAMOD. Are you opening it up to all of us?

Mrs. MALONEY. Of course.

Mr. JOHNSON. As far as the voters are concerned and the idea of trying to get this whole thing going again, it is conceivable to me. I started corresponding with these people, the Census Bureau, in April 1997. And I have had three letters since then. They all say the same thing. Why that should be, I really cannot figure that out.

No one has really made an honest attempt to suggest what you are suggesting, Mrs. Maloney, about the idea of a test pattern of some kind. If that had been done even 3 years ago, we'd be well on the way.

Mr. HAMOD. I guess I would raise the issue of the imaginary passport number. We are doing the best we can to come up with ways to meet the Census Bureau's requirements. I hope you'll give us the benefit of the doubt for that.

If someone in Canada or Mexico does not have a U.S. passport, and there are those who don't, we are proposing some other ways of doing it: voter registration card, birth certificate, certificate of naturalization, consular report on births abroad.

We are trying to be as flexible and helpful as we can be to find a way to make this work out. The problem we are facing is a healthy dose of skepticism, which I hope we are dispelling today; and, in the case of the Census Bureau, some real obstinacy. We are hopeful that just by showing we can make this happen if Congress works with us, and if the Census Bureau works with us, we can do it.

Mrs. MALONEY. Well, I have legislation that would do it.

Mr. HAMOD. We haven't had an opportunity to review it. We are very grateful to you for submitting it, and I have to say from personal experience, your staff and the chairman's staff are extraordinary.

We have had a fantastic exchange of ideas. We are extremely grateful for that. We wish that your legislation, that Mr. Gilman's legislation, had come out 5 years ago. We wouldn't be in the position today that we are in if it had. We have not had an opportunity to review the legislation. We will give it our serious consideration and we appreciate the two Members and their respective staffs' efforts to help us work this out.

Mrs. MALONEY. Thank you.

Mr. MILLER. We thank all of you for being here today. It has been a very informative hearing. I want to thank you for your com-

mitment and motivation for being here, but also the preparation that was put into the ideas of how to get the job done.

I don't think you should feel there is a question of distrust at all but whether we count homeless people and illegal immigrants. They all have to be counted as part of our system. But there has to be a verification to make sure it is accurate. There is a real concern that we have the most honest and accurate census as possible.

So, let me thank you on behalf of the committee and Mrs. Maloney.

Mrs. MALONEY. Thank you all. I have a series of questions. I didn't get a chance to ask all of them on how to make this happen. And I am going to ask if I could get them all to you and your attorney and see if we can get some answers, if that is all right.

Mr. MILLER. I ask unanimous consent that all Members and witnesses' written opening statements be included in the record. Without objection, so ordered. In case Members have additional questions for our witnesses, I ask for the record to remain open for 2 weeks for Members to submit questions for the record and witnesses to submit written answers as soon as possible. Without objection, so ordered.

I also ask unanimous consent that the collection of short statements on census 2000 mentioned by Ms. van Schooneveld be included in the record and without objection, that will also be included. Thank you once again and the hearing will stand adjourned.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned.]

[The joint appendix to supplement testimony of Mr. Gribble, Mr. Hamod, Mr. Johnson, and Ms. van Schooneveld, and additional information submitted for the hearing record follow:]

JOINT APPENDIX

**TO SUPPLEMENT TESTIMONY OF
L. LEIGH GRIBBLE, DAVID A. HAMOD,
DONALD JOHNSON, JOSEPH SMALLHOOVER
AND DOROTHY VAN SCHOONEVELD
BEFORE THE
HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON THE CENSUS**

WEDNESDAY, JUNE 9, 1999

CONTENTS

<u>Exhibit</u>	<u>Document Description</u>
A	Proposed Official Private Overseas Citizen 2000 Census Card ("OCCC")
B	Federal Post Card Application ("FPCA") SF 76, Revised 1995
C	Excerpts from Karen M. Mills, U.S. Department of Commerce Economics and Statistics Administration, Bureau of the Census, <i>Technical Paper 62: Americans Overseas in U.S. Censuses</i> (1993) relating to the 1960, 1970 and 1990 Censuses
D	Uniformed and Overseas Citizens Absentee Voting Act
E	<i>Franklin v. Massachusetts</i> , 509 U.S. 788 (1992)
F	Department of State Bureau of Consular Affairs Statistics on Private American Citizens Residing Abroad (April 1998)

[illegible]

THIS IS YOUR OFFICIAL PRIVATE OVERSEAS CITIZEN 2000 CENSUS CARD

This form is for **non-federally affiliated** Americans living outside the United States and its territories and possessions on **Census Day -- April 1, 2000**

1. Please complete this form on **April 1, 2000**, or as soon afterward as you can, and return it promptly **by mail** to your nearest U.S. Embassy or Consular Office or directly to the Bureau of the Census, Washington, D.C. 20233.
 - This form is being distributed through several sources to enable the greatest number of non-federally affiliated Americans overseas to be counted in the 2000 Census. If you receive more than one copy, please do not submit any duplicates.
2. If you or anyone else reported on this form does not have a U.S. passport number, the name and number of some other document proving U.S. citizenship should be used instead. Documents that serve as proof of U.S. citizenship include a Certificate of Naturalization or a Consular Report of Birth Abroad, or a voter registration card or birth certificate of any state or other U.S. jurisdiction. If using a voter registration card or birth certificate, be sure to include the state or other U.S. jurisdiction that issued that document.
3. The state or other U.S. jurisdiction of last residence for questions 1 and 2 should be the state or other U.S. jurisdiction in which the person resided before leaving the United States. If a person does not have such a previous residence in the United States, no state or other U.S. jurisdiction should be listed. Persons listed without a state or other U.S. jurisdiction of last residence in the United States will still be counted in the census, but they may not be allocated to a particular state for apportionment purposes.
 - Please include any of your children who are away attending school below college level.
5. This form should **NOT** be used to report either a member of the Armed Forces or other federal employee abroad on official orders for the U.S. government (or their dependents living with them abroad).
 - Armed Forces employees and other U.S. citizens abroad on U.S. government official orders (and their dependents living with them abroad) will be included in the census through reports made by their sponsor agencies.
6. If you have any question about how to fill out this form, please check the frequently asked questions list on the Bureau of the Census web site, <http://www.census.gov>, or contact your nearest U.S. Embassy or Consular Office.

NOTICE -- Your answers are **CONFIDENTIAL** by law (Title 13, United States Code). The information you provide will be used only for statistical purposes and cannot, by the same law, be disclosed to any person outside the Census Bureau (including any federal, state, local or foreign tax authority) for any reason whatsoever.

FEDERAL POST CARD APPLICATION (FPCA) SF 76, Revised 1995

(After completion, fold to include and send before mailing.)

WARNING: Knowingly presenting false information in this application could result in criminal sanctions.

PRIVACY ACT STATEMENT
 AUTHORITY: 42 USC 16730, "Title 1 - Application and Voting by Absent (Uniformed Services and Overseas Veterans in Absentee Ballot for Patient Office.)"

MAILING INSTRUCTIONS: Self-addressed small post card to your current address. Fold so that large post card is in an envelope; seal, "TO" and upper left corner on large post card, and mail. DO NOT STAMP OR APPLY TACK TO MAIL.

SPECIFIC INSTRUCTIONS FOR COMPLETION
 Complete the name, address, and citizenship section at the top of the large postcard. Note that your state may require a separate FPCA for each election. Consult a Voting Assistance Officer or your state section in the Voting Assistance Guide for further information.

Standard Form 76 (Back)
 (Rev. 10-95)

1. **APPLICANT INFORMATION:** Item 1.a. This information is requested from same states for statistical purposes by the Department of Justice in their enforcement of the Voting Rights Act and the National Voter Registration Act. Enter information for 1.a. through 1.f. For 1.a. through 1.f., provide identification form and number of that form. For example, passport 0000, State Department 0000, driver's license 0000, birth certificate 0000.

2. **1. LAST VOTED or PLACE OF LAST REGISTRATION:** Provide as much information as possible for the location where you last voted. This is not necessarily your last residence. Do not leave blank. Enter N/A if not applicable or if you are a first time voter.

3. **VOTING ASSISTANCE:** Provide address where you ACTUALLY LIVE. Your right to vote in your state and determination of voting precinct depend on your present residence unless you were within the state. If your voting residence address does not contain a street name, you may provide a Rural Route number and box number, but DO NOT USE A POST OFFICE BOX NUMBER. A Post Office Box is not a residence address. If using Rural Route number, include specific location of residence. Examples of voting residence: military home of record, permanent home address in U.S.; health or state where you past been, however long ago it may have been. It would be helpful if you list a name and telephone number of a local contact in the Voting Assistance Guide in the event the local election official has a question concerning the applicant.

4. **MAIL ABSENTEE BALLOT TO:** Provide the complete mailing address where you wish to receive your absentee ballot. Be sure to include APO or FPO if applicable and ZIP Code. If you will have a new address by the time registration forms or the ballot will be sent to you, be sure to list the new address.

5. **YOUR FAX NUMBER:** Your complete fax number (country and city code) is required if you or the local election official will be transmitting any of your election materials by fax. Members of the U.S. Military are requested to provide their command as well as DSN number (with "DSN" as a prefix if a DSN number is provided). Filing a suitable in some states, but limited purposes only. If your state allows you to submit this form by fax, IMPORTANT: CONSULT VOTING ASSISTANCE OFFICER OR VOTING ASSISTANCE GUIDE FOR FURTHER INFORMATION.

(Specific instructions are contained on reverse.)

REGISTRATION AND ABSENTEE BALLOT REQUEST - FEDERAL POST CARD APPLICATION (FPCA)
 APPLICATION FOR STATE OF _____ COUNTY OF _____ CITY OR TOWNSHIP OF _____ §

I REQUEST ABSENTEE BALLOTS FOR ALL ELECTIONS IN WHICH I AM ELIGIBLE TO VOTE.

1. **APPLICANT INFORMATION** (also instruction 1.f.)
 a. TYPE OR PRINTED NAME (Last, First, Middle Initial) _____ b. SEX: ☐ M ☐ F ☐ N/A
 c. DATE OF BIRTH _____ d. SOCIAL SECURITY NUMBER _____ e. OTHER IDENTIFICATION NO. (passport, ID card, etc.) _____

2. **1. LAST VOTED or PLACE OF LAST REGISTRATION** (Do not leave this section blank. See instructions.)
 a. YEAR _____ b. COUNTY, CITY, OR TOWNSHIP _____ c. STATE _____ d. VOTER REGISTRATION NO. (if known) _____

3. **VOTING RESIDENCE** (For military, legal residence. For overseas citizens, list residence in U.S. IF USING RURAL ROUTE, SEE INSTRUCTIONS.)
 a. RURAL ROUTE (Box) _____ b. BOX _____ c. CITY, TOWN, OR VILLAGE _____ d. STATE _____ e. COUNTY OR PARISH _____ f. ZIP CODE (9-DIGIT, 5-DIGIT) _____

4. **MAIL ABSENTEE BALLOT TO:** Mailing address where you want the ballot to be sent.

5. **YOUR FAX NUMBER** (If not applicable, leave blank. Include of international prefixes. See instructions.)

6. **POLITICAL PARTY AFFILIATION** (This information is requested for most states to send you a ballot for primary elections. See instructions.)

7. **REMARKS** (Provide additional information which will assist local election officials in determining your eligibility to register and vote. See instructions.)

8. **AFFIRMATION BY APPLICANT**
 (If only one: a, b, c, or d.)
 I solemnly affirm, under penalty of perjury, that I am: (See instructions.)
 a. a member of the Uniformed Services or merchant marine on active duty, or an eligible spouse or dependent.
 b. a U.S. citizen temporarily residing outside the U.S.
 c. a U.S. citizen overseas by virtue of employment or accompanying spouse or dependent.
 d. other U.S. citizen residing outside the U.S.

9. I am a U.S. citizen, eligible to vote in the above jurisdiction, and subscribed to any required state/local oath or statement.
 10. I have not been convicted of a felony or other disqualifying offense or been adjudicated mentally incompetent, or if so, my voting rights have been reinstated.
 11. I am not registering, requesting a ballot, or voting in any other jurisdiction in the U.S.
 12. The information on this form is true and complete.

13. **SIGNATURE OF APPLICANT** _____ DATE _____

14. **WITNESS/NOTARY ADDRESS AND SIGNATURE**
 (If required by state law) _____ DATE SIGNED _____

The information contained herein is for official use only. Any unauthorized release of this information may be punishable by law.

SPECIFIC INSTRUCTIONS FOR COMPLETION (Continued)		SOURCES OF ASSISTANCE											
<p>5. YOUR FAX NUMBER (Continued) INFORMATION: You must fax this form ONLY to one of the following numbers: (800) 368-4863 or (703) 862-8527 or (202) 693-5527. If you state does NOT allow you to submit this form by fax, DO NOT forward this form by fax, as it will not be processed.</p> <p>6. POLITICAL PARTY AFFILIATION: This information is required by most states in order to vote in primary elections. In most states, if you do not complete this section, you will not be sent a ballot for primary elections. Consult your individual state section in the Voting Assistance Guide for more specific information regarding your state's policy. Political party affiliation is not required if you live in Alaska (unless you are voting in a Republican party primary), American Samoa, Guam, Hawaii, Idaho, Michigan, Minnesota, Missouri, North Dakota, Vermont, Washington or Wisconsin. In order to vote in a primary election, you need not complete this section if your voting residence is in these states. If you want to indicate no affiliation or enrollment in a political party, write "unaffiliated."</p> <p>7. RESIDENCE: Provide any information which may assist local election officials in approving the application, such as maiden name, name and telephone number of a local contact person, etc. If you are requesting the special state absentee ballot, indicate here the reason you are requesting the special state absentee ballot, i.e., you are in an isolated area with sporadic mail service, submarine duty, etc. In Colorado, you must indicate if you are a native born or naturalized citizen of the United States.</p> <p>8. APPLICANT BY APPLICANT: Place an X in only one block: A, B, C, or D. In most cases, marking A, B, or C, will get you a full ballot. Marking B, or C, generally means that at some future time you intend to return again to that state. Marking block D, generally means that you were a resident of the state before leaving the U.S., and your intent to return at some time in the future is uncertain. Marking block D applies for a Federal ballot only if one is printed by the state. Federal law provides that the law liability may be imposed based on requesting your right to vote in Federal elections. If you are a civilian citizen residing outside the U.S. and wish to avoid classifying yourself as a state resident for tax purposes, you should mark block B. If the state sends a full ballot because it does not print a separate Federal ballot, you may vote the full ballot.</p>	<p>Block B, C, or D. In some states, a criminal conviction for a felony or certain misdemeanors, or an adjudication of mental incompetency disqualifies a person from voting, unless there has been a relinquishment of voting rights if required by state law.</p> <p>Block B, C, or D. Sign at the X. Provide the date you completed the form.</p> <p>9. WITNESS/NOTARY: Not all states require completion of this form. Consult your state section of the Voting Assistance Guide or your Voting Assistance Office for your state's requirements. If you require more space to complete the form, use item 7, Remarks.</p> <p style="text-align: center;">NOTE TO ELECTION OFFICIAL</p> <p>This is a return post card for your use. Please mark and fill in applicable items, sign your name, add your return address on reverse side, and return to the applicant.</p> <p style="text-align: center;">THIS ACKNOWLEDGES RECEIPT OF YOUR POST CARD REGISTRATION AND ABSENTEE BALLOT REQUEST.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">You will be sent an absentee ballot for the</td> <td style="width: 40%; padding: 5px;">election(s).</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Your ballot(s) will be mailed approximately</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Your application is incomplete. Please provide the following information to complete your application:</td> </tr> <tr> <td style="padding: 5px;">Your application could not be processed. (Item(s) must be completed.</td> <td style="padding: 5px;"></td> </tr> <tr> <td colspan="2" style="padding: 5px;">A separate application must be submitted for each election.</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Other Comments</td> </tr> </table> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> Signature _____ Title _____ Date Signed _____ </div>	You will be sent an absentee ballot for the	election(s).	Your ballot(s) will be mailed approximately		Your application is incomplete. Please provide the following information to complete your application:		Your application could not be processed. (Item(s) must be completed.		A separate application must be submitted for each election.		Other Comments	
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A separate application must be submitted for each election.													
Other Comments													

Field to applicant

Applicant name and complete address

**U.S. Postage Paid
\$5 USC 5406**

PAR AVION

Standard Form 76 (Rev. 10-95)
Issued under 48 USC, 16759 et seq.
76-116
1999 edition may be used.

OFFICIAL ABSENTEE BALLOTING MATERIAL - FIRST-CLASS MAIL

NO POSTAGE NECESSARY IN THE U.S. MAILED - 0MM E080

TO: _____

Technical Paper 62

[EXCERPTED]

Americans Overseas in U.S. Censuses

by
Karen M. Mills

U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

Americans Overseas in U.S. Censuses

by
Karen M. Mills

Issued November 1993



U.S. Department of Commerce
Ronald H. Brown, Secretary
Economics and Statistics Administration
Paul A. London, Acting Under Secretary
for Economic Affairs
BUREAU OF THE CENSUS
Harry A. Scarr, Acting Director



**Economics and Statistics
Administration**
Paul A. London, Acting Under Secretary
for Economic Affairs



BUREAU OF THE CENSUS
Harry A. Scarr, Acting Director

Charles D. Jones, Associate Director for
Decennial Census
William P. Butz, Associate Director for
Demographic Programs
Bryant Benton, Associate Director for
Field Operations
Clifford J. Parker, Acting Associate Director
for Administration
Peter A. Bounpane, Assistant Director for
Decennial Census

INTRODUCTION

The decision to enumerate Americans living abroad in U.S. decennial censuses has varied over the years, as well as the decisions of how this population group is defined and where these persons should be counted. This report documents the treatment of Americans living overseas in the decennial censuses, particularly those conducted in the 20th century. Excluded from this discussion are U.S. citizens temporarily abroad on private business, travel, and so forth. Such persons were enumerated in each census at their usual place of residence in the United States as absent members of their own households.

The first Census Act in 1790 stated that each person enumerated in the census of the United States was to be counted as an inhabitant of his or her "usual place of abode."¹ The concept of usual residence as the overriding criterion for where to count a person thus was established for the first census and has been the guiding principle in all subsequent censuses. Usual residence generally has been construed to mean the place where the person lives and sleeps most of the time. Instructions that included residence rules specifying where to count various classes of persons have been furnished to census takers since 1820 (to marshals and their assistants from 1820-70 and to enumerators beginning in 1880).

The implementation of the concept of usual residence in decennial censuses also has resulted in the establishment of residence rules for certain categories of persons whose usual place of residence is not immediately apparent. The population segment of Americans living overseas traditionally has been one of these categories.²

Table 1 lists the residence rules given to census takers for Americans living abroad for an extended period and for crews of U.S. merchant vessels at sea. As this table illustrates, the residence rules for these groups changed considerably from census to census.

Various types of materials were used in preparing this report. Census reports and other published documents such as procedural histories were reviewed for each census from 1790 to 1970 to determine whether Americans overseas were reported in the census. However, given that published historical census documentation on the treatment of Americans overseas was often meager,

fragmentary, and sketchy—particularly before 1950—other sources were consulted as well. For the 1900 to 1920 censuses, microfilm of the census schedules used for enumerating Americans abroad or at sea were examined at the National Archives and Records Administration in Washington, DC. For the 1930 and 1940 censuses, the microfilmed census schedules were reviewed at the Census Bureau's Data Preparation Division in Jeffersonville, IN. Finally, to gather information on the overseas census planning and reporting since 1950, unpublished reports and position papers, internal memorandums, and copies of correspondence also were studied.

A major observation that emerged from reviewing these historic materials was the lack of a single conceptual thread running through the censuses concerning how Americans abroad fit into the overall decennial enumeration. It was partly this absence that led to the inconsistencies—evident in this report—in census treatment of Americans overseas. Different definitions of the population components that were included and in the areas that were considered overseas, varying instructions to census takers regarding where to enumerate this population, and differences in procedures and methods of data collection (administrative records, direct enumeration, or a combination of the two) all contributed to a lack of uniformity in treatment over the years. Legal and political considerations also played an important role in formulating the Census Bureau's concept and policy of who to count overseas and where to count them. Cross-cutting all of these issues has been the fact that decisions relating to overseas enumeration for a specific census have reflected the overall census procedures and prevailing societal conditions (for example, the presence of military conflicts or economic downturns).

For the censuses since 1900, counts of the American overseas population and its components generally have been published in table 1 of *Number of Inhabitants, United States Summary*. In the censuses of 1950-70, Americans overseas also were shown by selected demographic characteristics (for example, age, race, sex, and nativity) in a table in *General Demographic Characteristics, United States Summary*. Special subject reports were issued in the 1960 and 1970 censuses on U.S. civilians abroad for an extended period. (See "References" for exact citations.)

In this report, the terms "abroad" and "overseas" are used interchangeably. The countries considered as "living abroad" have varied and were specified in census reports only in 1950-70 and 1990.

¹The synonym "usual place of residence" was introduced in the 1940 instructions to enumerators.

²Other categories of persons for which specific residence rules are determined at each census include persons away from their usual residence on Census Day; college students; boarding school students; members of the Armed Forces, including Navy afloat; persons in institutions; crews of U.S. merchant marine vessels not at sea; persons with multiple residence; migrant workers; and persons with no permanent residence.

Table 1. Residence Rules Pertaining to Americans Overseas: 1870-1990

[Beginning in 1820, census takers were supplied with printed instructions to clarify who should be enumerated in their district. Census years not listed below did not include residence rules for the overseas component]

U.S. Military Personnel Stationed Abroad or at Sea	
1870, 1880, 1900	Enumerate at stateside home (also may have been included in overseas population in 1900)
1910-90	Do not enumerate at stateside home (included in overseas population)
Federal Civilian Employees Stationed Abroad	
1900	Enumerate at stateside home (also may have been included in overseas population)
1910-30, 1950-90	Do not enumerate at stateside home (included in overseas population)
Crews of U.S. Merchant Marine Vessels at Sea	
1870, 1880, 1910, 1920	Enumerate at stateside home (not included in overseas population)
1930, 1940	Enumerate officers at stateside home. Do not enumerate crews at stateside home. All merchant vessels were homeported, regardless of location, so crews were not included in overseas population
1950-90	Do not enumerate at stateside home 1950, 1960—included in overseas population if vessel was at sea or in a foreign port 1970—included in overseas population if vessel was at sea with a foreign port as its designation or in a foreign port 1980—not included in overseas population 1990—included in overseas population if vessel was sailing from one foreign port to another or in a foreign port
Private U.S. Citizens Abroad for an Extended Period	
1910-40	Enumerate at stateside home (not included in overseas population)
1960-90	Do not enumerate at stateside home (included in overseas population only in 1960 and 1970)

OVERVIEW

Only twice in the first 100 years since census-taking began in the United States in 1790 were separate counts of the American overseas population reported in the decennial censuses. The 1830 census was the first to include counts for any segment of the overseas population. The total U.S. population reported for this census and for the 1840 census included persons on U.S. naval vessels at sea. It was not until 60 years later, in the 1900 census, that counts of the overseas population again were reported. Since then, overseas counts have been reported in every decennial census.

Table 2 provides historical counts of the U.S. population abroad or at sea reported in the decennial censuses, and table 3 lists the data collection forms used to enumerate components of the American overseas population.

The 1900 and 1910 censuses enumerated the U.S. population abroad on the same forms as those used stateside. The 1920 census was the first to use special forms to enumerate the population abroad. The 1930 census again enumerated Americans overseas on the general stateside population schedule.

Although microfilm of 1940 census records shows Americans abroad enumerated on census schedules, a 1950 census report stated that in the 1940 census, the War and Navy Departments provided the Census Bureau with the number of their personnel stationed abroad, and the State Department furnished counts of Americans in the diplomatic service abroad and their dependents living with them.

The 1950 census was the first to make provision for the actual enumeration of Americans abroad or at sea on special individual or household census forms. (The special 1920 form was a listing form.) The overseas groups enumerated were U.S. military personnel and Federal civilian employees, their dependents living with them, and crews of U.S. merchant vessels at sea or docked in a foreign port. The 1950 overseas enumeration was conducted through cooperative arrangements with the Departments of Defense and State and the Maritime Administration.

In the 1960 census, special census report forms were used to enumerate the same overseas groups as in 1950, again with the cooperation of the Departments of Defense and State and the Maritime Administration. In addition, for the first time (the only other being 1970), a special effort was made to obtain voluntary reports from private U.S. citizens not affiliated with the Federal Government who were abroad for an extended period. The reporting of these private U.S. citizens was not complete, however, and understated the true number of these persons abroad.

The same components of Americans overseas were included again in the 1970 census. However, counts of Army, Air Force, and Marine Corps personnel stationed abroad were based on administrative records provided by the Department of Defense (DOD), rather than by direct enumeration on census forms. Census forms were used to enumerate the following:

- Dependents living with the Army, Air Force, and Marine Corps personnel abroad
- Land-based Navy and Coast Guard personnel stationed abroad and their dependents living with them
- Crews of U.S. military vessels deployed to the 6th or 7th Fleets
- Federal civilian employees stationed abroad and their dependents living with them
- Crews of U.S. merchant vessels at sea with a foreign port as their destination or docked in a foreign port
- Private U.S. citizens living abroad for an extended period and their dependents living with them³

The 1970 census was the first in which certain categories of Americans overseas officially were included in the congressional apportionment population.⁴ In this census, the apportionment population was expanded to include certain segments of the relatively large number of U.S. citizens who were overseas at that time. These included Federal employees (both military and civilian) and their dependents living with them who resided in a U.S. commonwealth or territory or a foreign country and reported a home State.

The change in the definition of the apportionment population was made in response to bipartisan congressional concern for the substantial numbers of Americans

³As in 1960, the reporting of this group was not complete and understated the true number of these persons abroad.

⁴In most censuses, the apportionment population base is the resident population for each of the 50 States and is used to determine the number of seats allotted to each State in the U.S. House of Representatives. The apportionment population excludes the District of Columbia. By law, the Secretary of Commerce must deliver the apportionment counts to the President within 6 months of Census Day. Thus, for censuses conducted on April 1, the date would be December 31.

Enumeration instructions for the 1900-40 censuses (and perhaps some pre-1900 censuses such as 1850, 1870, and 1880) may have resulted in some Americans overseas being included in the apportionment population for these years. Enumerators were instructed in these censuses to report certain Americans abroad as residents of their stateside home. Thus, these persons would have been included in the resident population, which is used to calculate the apportionment.

who would have been enumerated in their home States on April 1, 1970, except for their assignment to duty stations overseas as military or civilian employees of the U.S. Government. In particular, the scale of U.S. activities in Southeast Asia meant unusually large numbers of military personnel were stationed overseas on Census Day.

In prior decennial censuses, the number of Federal Government personnel on duty overseas was relatively small and had never been included in the apportionment population. Attorney General J. Howard McGrath, when consulted in 1949, stated that exclusion of the overseas population from the apportionment count, as was done in 1940 and prior censuses and as was being proposed for 1950, was not contrary to the requirements of the Constitution or applicable law. The opinion stated, in part, "The Congress has vested in the Director of the Census, subject to the approval of the Secretary of Commerce, discretion to determine the manner in which inhabitants of the United States who are abroad...shall be enumerated...."

In 1969, this matter was brought to the attention of the House Subcommittee on Census and Statistics of the Committee on Post Office and Civil Service (which had immediate congressional oversight of the Census Bureau) during its hearings on the "1970 Census and Legislation Related Thereto." The subcommittee, recognizing the larger numbers of U.S. military and Federal civilian personnel expected to be overseas at the time of the 1970 census, recommended that these Americans be counted in the apportionment population. Congressional questions also were raised in 1969 at hearings before the Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary.

Also in 1969, the Department of Commerce sought a ruling from the Department of Justice on the legality of the proposed procedure to include certain components of the overseas population in the 1970 State apportionment totals. The opinion letter was written by then-Assistant Attorney General William Rehnquist, who perceived no objection to their inclusion and stated that "the Director of the Census may, in his discretion, validly adopt that procedure."⁵

Allocations of the 1970 overseas population for apportionment purposes were made at the State level only. Allocations were not made to subdivisions within a State, as this would have required U.S. street addresses. U.S. street address was not asked on the Overseas Census Report or the Report for Military and Maritime Personnel.

⁵In 1967, the Census Bureau had evaluated the possible effects on apportionment that would have resulted if Federal Government overseas personnel and their dependents—estimated to be somewhat fewer than 2 million persons—were included in the apportionment count. It was determined that their inclusion at that time would not have resulted in any State having its congressional representation changed since the estimated 2 million persons overseas, although a large number by itself, was less than 1 percent of the total U.S. population and had approximately the same State-by-State distribution as the resident population. The actual 1970 overseas population (1,574,537) added to the apportionment base (resident population of each State minus the District of Columbia) caused a congressional seat to be shifted from Connecticut to Oklahoma by fewer than 300 persons.

This detailed information also was not included in DOD's administrative counts, by home State of record, for Army, Air Force, or Marine Corps personnel stationed abroad. Thus, the within-State redistricting process used different numbers as its base than the between-State reapportionment.

In *Bethel Park v. Stans*, an appellate court held in 1971 that neither the U.S. Constitution nor the Census Act demanded allocation of persons to a particular subdivision of a State for apportionment purposes. Moreover, the court held that the Census Bureau, in determining the number of representatives to which each State was entitled, could properly allocate overseas military and Federal civilian personnel and their dependents to the State of their "home of record" and not to any political subdivision within the State.

The overseas enumerations associated with the 1950-70 censuses were necessarily conducted under operational conditions very different from those used in the stateside censuses. The decentralized and globally far-flung nature of these overseas operations prevented the utilization of most of the standard review and quality control procedures used stateside.

For the 1980 census, the Census Bureau decided not to enumerate Americans overseas directly, as had been done in censuses since 1950, but to use administrative records instead. The reasons for this departure in practice from recent past censuses were the following:

- The number of Americans overseas was much smaller than in 1970.
- There were no plans to include Americans overseas in the apportionment population, as was done in 1970. In testimony in 1976 before the House Subcommittee on Census and Population (formerly the Subcommittee on Census and Statistics) of the Committee on Post Office and Civil Service, the Deputy Director of the Census Bureau outlined the proposed rules of residence for the 1980 census. He indicated that the Bureau did not plan to include any component of Americans overseas in the apportionment population for 1980. The subcommittee raised no objections to that proposal.
- There were no constitutional or other legal mandates requiring the direct enumeration of Americans living overseas. Title 13 of the U.S. Code stated that the census enumeration should include each State, the District of Columbia, and its territories and possessions; it did not require the enumeration of Americans living in foreign countries.
- There were no Federal program requirements for data on Americans overseas, and very little use was made of the information on Americans overseas that had been collected in past censuses. The Departments of Defense and State and, to a lesser extent, other government agencies having employees abroad, maintained their own records for these personnel.

- Data were readily available from administrative records for Americans overseas affiliated with the Federal Government. Data on overseas Armed Forces personnel, Federal civilian employees, and their dependents living with them could be obtained from the Departments of Defense and State and the Office of Personnel Management (OPM).

- Complete or even adequate counts of private Americans overseas not affiliated with the Federal Government could not be obtained in 1960 and 1970, when special efforts were made to enumerate these persons, and there was some question as to whether this universe could be properly defined. Major problems associated with obtaining an accurate count of this component included the voluntary basis on which this group had to be enumerated (respondents had to go to a U.S. embassy or consulate to obtain a form), the lack of up-to-date embassy and consulate mailing lists for Americans living in their jurisdictions, and the definitional problem of who should be included in such an enumeration.

With regard to the definitional issue, many alternatives could be considered. For example, should an enumeration of private Americans overseas include all persons with a claim to U.S. citizenship? Only U.S. citizens who intended to return to the United States? All persons born in the United States (some of whom would have gone on to become citizens of the country in which they currently resided)? Only those citizens eligible to vote? Only those tied financially to the United States, such as Social Security beneficiaries or employees of U.S. or multinational corporations? People having dual (U.S. and second-nation) citizenship?

It was believed that even if a clear operational definition of this universe could have been developed, it still would have been necessary to contact a much broader range of potential respondents in order to identify those who actually met the conceptual criteria for inclusion.

The 1990 census, for only the second time in census history, included certain components of Americans overseas in the apportionment population. The overseas components included were members of the Armed Forces, Federal civilian employees, and their dependents living with them. Counts of these persons were obtained from 30 Federal departments and agencies and were based primarily on administrative records.

A significant factor in the Census Bureau's decision to allocate segments of the overseas population to their home State for apportionment purposes was the substantial amount of bipartisan congressional support given to this matter late in the 1980 decade. Several bills requiring inclusion of overseas military personnel in the apportionment counts were introduced in both houses of the 100th and 101st Congresses.

The Department of Commerce, in an August 1989 press release, announced plans to include overseas military and civilian DOD employees in the 1990 census apportionment

population. In addition, the Deputy Director of the Census Bureau testified before the House Subcommittee on Census and Population in September 1989 that the Bureau would include overseas military and civilian DOD employees and their associated dependents in the 1990 apportionment counts. He cited several reasons for the decision:

- The 1969 Justice Department opinion recognizing that the Director of the Census Bureau had discretionary authority to decide whether to include overseas Americans in the apportionment population.
- Bipartisan congressional support for including overseas military personnel.
- The DOD's decision that it could provide the necessary data to the Bureau in time to meet the December 31, 1990 deadline for reporting apportionment counts to the President.

About the time of the hearing, the DOD, with technical assistance from the Census Bureau, planned to enumerate its overseas personnel and dependents concurrent with the 1990 stateside census enumeration. These data would be used by the Bureau for inclusion in the apportionment counts and by DOD for a variety of programs.

The Deputy Director further testified that these overseas personnel and their dependents would have maintained a usual residence in the United States had they not been assigned abroad in fulfillment of their military and professional obligations.

Because of a lack of funding and other constraints, in December 1989, the DOD cancelled its plans to conduct an overseas enumeration but agreed to provide overseas counts from its existing automated administrative records. The DOD identified three alternative methods from its administrative files for determining home State affiliation of its overseas military personnel:

- Home of record—State declared by the member of the Armed Forces to be the permanent home at time of entry or reenlistment into the service. Home of record is used to determine the travel stipend granted upon discharge (derived from personnel files).
- Legal residence—State of residence a member declares for State income tax withholding purposes (derived from payroll files).
- Last duty station—State location of the facility to which the member was assigned before going overseas (derived from personnel files).

After reviewing the three data sources available in DOD records for providing counts, the Census Bureau concluded in July 1990 that DOD's "home of record" was the most consistent with the concept of "usual residence," used since 1790 as the basis for determining residency in the decennial census. Also, home of record was the concept used in allocating most overseas military personnel in the 1970 census.

In many cases, legal residence might reflect a State chosen because it had no or low taxes or one where military personnel were exempt from paying income taxes. A 1987 General Accounting Office report had indicated that a significant proportion of military personnel declared their legal residence in one of the States that did not tax personal wages or exempted all military pay from their income.

The use of last duty station, reflecting the location of the last facility to which a person was assigned, would result in counting some military personnel and their dependents in States other than their actual previous U.S. residence. For example, those assigned to the Pentagon would be counted as District of Columbia residents even though they might have actually lived in Maryland or Virginia (although physically located in Virginia, the Pentagon has a duty station of the District of Columbia).

Furthermore, one bill requiring the inclusion of overseas military personnel and dependents in the apportionment population (H.R. 4903) mandated the use of "home of record." That bill passed the House of Representatives in June 1990, and a similar proposal (S. 2675) had been referred to the appropriate Senate committee for consideration.⁶

In response to the strong congressional support for the use of home of record data, the Commerce Department decided to use those data, supplemented and improved with DOD's automated records for missing information, as the basis for including overseas military and dependents in the 1990 apportionment counts.

A June 1990 Congressional Research Service report for Congress found that allocating military personnel by State using home of record most closely resembled the State-by-State distribution of the resident population. An allocation based on last duty station varied from the resident population distribution by 10 times as much as home of record, and legal residence, by nearly 3 times as much.

In addition to the arrangement made with DOD for obtaining counts of its overseas military personnel, the Census Bureau obtained counts of overseas personnel by home State from 29 other Federal agencies. These counts were based principally on administrative records from the employing agency. The DOD also conducted a survey of

its overseas civilian employees and dependents using a short, self-administered questionnaire.

As in the 1970 census, allocations of the 1990 overseas population for apportionment purposes were made at the State level only. This population was not included, therefore, in the substate counts used for redistricting because the administrative records did not contain detailed (street/place) addresses.

In May 1991, the Commonwealth of Massachusetts filed a legal challenge against the Secretary of Commerce and others. One of the issues in the case was the constitutionality and/or legality of including overseas U.S. military and Federal civilian employees and their dependents living with them in the 1990 census counts used to apportion the U.S. House of Representatives. Massachusetts lost its 11th House seat by a narrow margin as a result of the apportionment after the 1990 census. This seat, the 435th House seat allocated under the apportionment formula, was shifted to Washington State.

The 1990 census apportionment, calculated by the "method of equal proportions" that had been used since the 1940 census, assigned a priority value to each congressional seat. Constitutionally, every State starts with one seat. Under the method of equal proportions, additional seats are added to each State's delegation based on the priority value for that State's next seat relative to the other 49 States' priority values for their next seats. Using the 1990 apportionment population, Washington's 9th seat was the 435th and last seat assigned; Massachusetts' 11th seat would have been the 436th.

In February 1992, a three-judge panel of the U.S. District Court for the District of Massachusetts held that the decision of the Secretary of Commerce to include overseas military and Federal civilian employees and their dependents living with them in the apportionment counts was "arbitrary and capricious" under the standards of the Federal Administrative Procedure Act.

In an appeal by the Commerce Department, the U.S. Supreme Court in June 1992 unanimously reversed the three-judge panel's decision. Thus, the Secretary of Commerce's decision to allocate Federal military and civilian personnel serving abroad and their dependents living with them to the State population totals for purposes of apportioning the U.S. House of Representatives was allowed to stand and, as a result, Massachusetts lost a seat in the House of Representatives.

⁶Once the Census Bureau decided to include overseas military personnel and their dependents in the apportionment population, no further action was taken in the 101st Congress on this matter.

Table 2. Americans Overseas, by Type: 1830, 1840, and 1900-90

[In 1850-90 censuses, no figures were published for Americans overseas]

Year	Total, U.S. population abroad ¹	Federal employees			Dependents of Federal employees (Armed Forces and civilian)	Crews of U.S. merchant vessels	Private U.S. citizens
		Total	Armed Forces	Civilians			
1990.....	² 925 845	(NA)	² 29 259	¹ (NA)	¹ (NA)	³ 3 026	(NA)
1980.....	995 546	562 962	¹ 515 408	⁴ 47 554	⁴ 432 584	(NA)	(NA)
1970.....	1 297 536	1 114 224	¹ 1 057 776	⁴46 448	³371 366	¹ 15 910	¹⁰ 236 338
1960.....	1 374 421	647 730	¹ 609 720	³ 38 010	⁴ 506 393	¹² 32 454	¹¹ 167 834
1950.....	¹² 481 545	328 505	¹⁴ 301 595	² 26 910	⁴ 107 350	¹² 45 690	(NA)
1940.....	¹⁴ 118 933	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1930.....	¹ 89 453	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1920.....	¹⁴ 117 238	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1910.....	¹ 85 608	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1900.....	¹⁴ 91 219	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1840.....	²⁰ 5 100	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
1830.....	²⁰ 5 318	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)

(NA) Not available.

¹Excludes U.S. citizens temporarily abroad on private business, travel, etc. Such persons were enumerated at their usual place of residence in the United States as absent members of their own households. Also excludes private, non-federally affiliated U.S. citizens living abroad for an extended period, except for 1970 and 1980, which include portions of this subpopulation.

²Excludes 9,460 persons overseas whose home State was not designated and 16,000 persons overseas whose designated home "State" was a U.S. commonwealth or territory.

³Based on administrative records provided by Department of Defense.

⁴Not shown separately. Total number reported of overseas Federal civilian employees and dependents (of both military and civilian personnel) was 393,550. Based on administrative records provided by 30 Federal agencies (including Department of Defense) and survey results provided by Department of Defense.

⁵Vessels sailing from one foreign port to another or in a foreign port. Overseas status based on Census Location Report.

⁶Based on administrative records provided by Office of Personnel Management and Departments of Defense and State.

⁷For members of the Army, Air Force, and Marine Corps abroad, based on administrative records provided by Department of Defense. Crews of deployed U.S. military vessels were enumerated on Report for Military and Maritime Personnel. Land-based Navy and Coast Guard personnel abroad were enumerated on Overseas Census Report.

⁸Enumerated on Overseas Census Report.

⁹Vessels at sea with a foreign port as their destination or in a foreign port. Enumerated on Report for Military and Maritime Personnel.

¹⁰U.S. citizens living abroad for an extended period not affiliated with the Federal Government and their overseas dependents. Enumerated on Overseas Census Report.

¹¹Enumerated on Overseas Census Report and Report for Military and Maritime Personnel.

¹²Vessels at sea or in a foreign port. Enumerated on Report for Military and Maritime Personnel.

¹³Based on 20-percent sample of reports received.

¹⁴Enumerated on Overseas Census Report and Crews of Vessels Report.

¹⁵Vessels at sea or in a foreign port. Enumerated on Crews of Vessels Report.

¹⁶Source of overseas count is unclear; see section on 1940 census.

¹⁷Enumerated on general population schedule.

¹⁸Enumerated on report for Military and Naval Population, Etc., Abroad.

¹⁹Enumerated on report for Military and Naval Population and report for Civilians, Residents of U.S. at Military or Naval Stations.

²⁰Persons on naval vessels in the service of the United States.

Table 3. Data Collection Forms Used to Enumerate Americans Overseas: 1900-30, 1950-70, and 1990

(Source of 1940 overseas count is unclear. Forms were not used to enumerate the overseas population in 1980. Forms are Census Bureau forms except 1990 DOD survey form)

Census	Form number and title	Use in overseas data collection	Distribution
1900	7-413, Schedule No. 1, Population—Military and Naval Population ¹	Listing sheet to enumerate U.S. military and naval personnel stationed abroad or at sea on June 1, 1900 (4-page booklet, 50 person lines on each page).	Unknown
	7-224, Schedule No. 1, Population—Civilians, Residents of the United States at Military or Naval Stations ¹	Listing sheet to enumerate overseas military dependents, Federal civilian employees at military and naval stations abroad, and their dependents living with them on June 1, 1900 (2 sides, 50 person lines on each side).	Unknown
1910	General Population Schedule ¹	Listing sheet to enumerate U.S. military and naval personnel stationed abroad or at sea, Federal civilian employees at military and naval stations abroad, and their dependents living with them on April 15, 1910 (2 sides, 50 person lines on each side).	Unknown
1920	D7-686, Military and Naval Population, Etc., Abroad	Listing sheet to enumerate U.S. military personnel stationed abroad, persons abroad in the service of the American Red Cross or U.S. consular service, their dependents living with them, and crews of U.S. naval vessels abroad or in American waters, but not on fixed station, on January 1, 1920 (2 sides, 50 person lines on each side).	Unknown
1930	15-6, General Population Schedule ¹	Listing sheet to enumerate U.S. military personnel stationed abroad, persons abroad in the service of the American Red Cross or U.S. consular service, their dependents living with them, and crews of U.S. naval vessels abroad or in American waters, but not on fixed station, on April 1, 1930 (2 sides, 50 person lines on each side).	Unknown
1950	P4, Crews of Vessels Report ¹	Individual form to enumerate crews of U.S. military and merchant marine vessels in foreign ports or at sea on April 1, 1950.	Shipped to U.S. Navy and Coast Guard vessels and shipowners of private lines. Shipowners mailed forms to all vessels.
	P5, Overseas Census Report	Household form to enumerate U.S. military personnel and Federal civilian employees stationed abroad, their dependents living with them, and private U.S. citizens and their dependents living abroad on April 1, 1950.	Distributed and collected by DOD for its personnel and dependents abroad and by Department of State for other Americans living abroad.
1960	60PH-13, Report for Military and Maritime Personnel ¹	Individual form to enumerate crews of U.S. military and merchant marine vessels in foreign ports or at sea on April 1, 1960.	Shipped to U.S. Navy, Coast Guard, and U.S. merchant marine vessels, with the cooperation of DOD, Coast Guard, Maritime Administration, and shipowners.
	60PH-15, Overseas Census Report	Household form to enumerate U.S. military personnel and Federal civilian employees stationed abroad, their dependents living with them, and private U.S. citizens and their dependents living abroad on April 1, 1960.	Distributed and collected by DOD for its personnel and dependents abroad and by Department of State for other Americans living abroad.
1970	D-21, Report for Military and Maritime Personnel ¹	Individual form to enumerate crews of deployed U.S. military vessels and merchant marine vessels in foreign ports or at sea with a foreign port as their destination on April 1, 1970.	Shipped to U.S. Navy, Coast Guard, and U.S. merchant marine vessels, with the cooperation of DOD, Coast Guard, Maritime Administration, and shipowners.
	D-23, Overseas Census Report	Household form to enumerate overseas land-based Navy and Coast Guard personnel, all overseas military dependents, Federal civilian employees stationed abroad, their dependents living with them, and private U.S. citizens and their dependents living abroad on April 1, 1970. (DOD provided counts of Army, Air Force, and Marine Corps personnel abroad on April 1, 1970.)	Distributed and collected by DOD for its personnel and dependents abroad and by Department of State for other Americans living abroad.

See footnote at end of table.

Table 3. Data Collection Forms Used to Enumerate Americans Overseas: 1900-30, 1950-70, and 1990—Continued
 [Source of 1940 overseas count is unclear. Forms were not used to enumerate the overseas population in 1980. Forms are Census Bureau forms except 1990 DOD survey form]

Census	Form number and title	Use in overseas data collection	Distribution
1990	D-47, 1990 Census Location Report for American Flag Vessels	Reporting form used by shipmasters of U.S. merchant marine vessels to determine location of vessels.	Mailed to shipowners of private lines, with the cooperation of the Maritime Administration. Shipowners mailed forms to all vessels.
	D-55, Overseas Personnel and Dependents—Counts by State of Residence	Reporting form used by Federal agencies to provide home State for their overseas personnel and dependents.	Mailed to Federal agencies having overseas personnel.
	(DOD form) 1990 Survey of DOD Overseas Civilian Personnel and Dependents	DOD household survey form to enumerate DOD civilian employees stationed abroad on March 31, 1990 and their dependents living with them.	Distributed and collected by DOD.

¹Used primarily to enumerate the stateside population.

1960 CENSUS

The U.S. population abroad reported in the 1960 census was 1,374,421. As of April 1, 1960, this figure comprised—

- land-based U.S. military personnel stationed abroad and their dependents living with them.
- crews of U.S. military vessels at sea or docked in a foreign port.
- Federal civilian employees stationed abroad and their dependents living with them.
- crews of vessels in the U.S. merchant marine at sea or docked in a foreign port.
- private U.S. citizens living abroad for an extended period and their dependents living with them.

These persons were not allocated to any region or State or included in the population for purposes of calculating congressional apportionment.

As in 1950, the 1960 census also used specially designed census report forms to enumerate the overseas population. The enumeration was made possible through the cooperative efforts of the Departments of Defense and State, Coast Guard, and the Maritime Administration. These agencies took responsibility for the distribution and collection of the report forms. In addition, for the first time, a special effort was made to obtain reports for private U.S. citizens living abroad for an extended period.

For the 1960 census, "living abroad" was defined as residing outside the 50 States, the District of Columbia, or a U.S. commonwealth or territory (Puerto Rico, American Samoa, Panama Canal Zone, Guam, and the U.S. Virgin Islands). Persons living in these areas were not considered part of the overseas population.

For the first time, a separate census report was issued on *Americans Overseas*, PC(3)-1C, which provided a broad range of social and economic characteristics of the civilian population abroad.

Land-Based Armed Forces, Federal Civilian Employees, and Dependents

Members of land-based Armed Forces and Federal civilian employees stationed abroad, and their dependents living with them on April 1, 1960, were self-enumerated on the Overseas Census Report (Form 60-PH-15).

The distribution of Overseas Census Reports to persons living on military installations abroad, or attached thereto, was handled by the Department of Defense (DOD), which distributed and collected the forms for both its military and civilian personnel and their dependents living with them. Appropriate numbers of forms were

shipped to the commanding officers, who arranged for their distribution, completion, collection, and transmittal to the Census Bureau's Census Operations Office in Jeffersonville, IN.

The Department of State was responsible for the enumeration of all other overseas Federal employees and their dependents living with them. It distributed copies of the Overseas Census Report to its embassies and consulates throughout the world. Completed forms were returned to these offices and shipped to the Census Operations Office in Jeffersonville, IN.

Federal civilian employees abroad consisted of U.S. citizens 18 years old or over who reported in items 17 and 18b of the Overseas Census Report that they were working as civilians for an agency of the Federal Government. Excluded from this group were the 3,425 persons reported as working as Federal civilian employees aboard ships of the Military Sea Transportation Service; they were included in the category "crews of merchant vessels."

The count for overseas Federal civilian employees reported in the 1960 census and the figure provided by the U.S. Civil Service Commission (now the Office of Personnel Management) were considered generally consistent, in view of the differences between the two sources in definitions and methods of data collection.

Dependents of Federal employees included the spouse, children, and parents who were living in the household of an overseas Federal employee (military or civilian). Parents were included only if they were U.S. citizens (item 8) or reported they had lived in the United States at some time (item 10).

Relatives other than spouse, child, or parent, and nonrelatives living in the household of an overseas Federal employee were not included in the count of Americans overseas unless they individually met the qualifications for one of the other population groups of Americans overseas (for example, Armed Forces or Federal civilian employees).

The count for overseas dependents of Armed Forces personnel reported on the Overseas Census Reports was comparable to the March 31, 1960 figure published by the DOD. There was no similar figure available against which to compare the census count for overseas dependents of Federal civilian employees.

Crews of Military and Merchant Marine Vessels

These components comprised crews of military and U.S. merchant marine vessels at sea or berthed in a foreign port on April 1, 1960. Also included were the 3,425 persons reported as Federal civilian employees of the Military Sea Transportation Service. All of these persons were self-enumerated on the Report for Military and Maritime Personnel (Form 60-PH-13).

Reports were shipped in bulk to the DOD, Coast Guard, and Maritime Administration. These agencies shipped packages of forms to the captain of each vessel, whether in port or at sea on April 1, 1960, for the enumeration of crew members aboard ship.

Completed reports were mailed directly by each ship captain to the Jeffersonville, IN, Census Operations Office, where the location of each vessel on April 1, 1960, was checked. The same procedure as in 1950 was used. Crews of vessels berthed in a U.S. port, or in a port of a U.S. commonwealth or territory, were counted in the resident population. Crews of all other vessels (that is, those at sea or in foreign ports) were counted in the overseas population.

Private U.S. Citizens

The 1960 census was the first to include private U.S. citizens in the overseas population.⁷ This group consisted of U.S. citizens living abroad for an extended period and not affiliated with the Federal Government who obtained and filled out an Overseas Census Report (Form 60-PH-15). Included in this group were private business persons, contract workers on military installations, employees of foreign governments and international organizations, retired persons, missionaries and religious workers, students, teachers, expatriates, and their family members (some of whom may not have been U.S. citizens).

The State Department coordinated the enumeration of these persons through its embassies and consular offices. These offices made forms available for Americans living in their service areas to pick up, received the completed forms, and returned them to the Census Bureau for processing.

Many U.S. embassies and consulates enlisted the services of local newspapers to inform Americans of the census operation. Some of the major U.S. publications with overseas bureaus included information on the census in their foreign editions. Religious groups with missionaries abroad, as well as large corporations with overseas employees, informed their personnel of the census in their newsletters and other periodicals. Several religious organizations also distributed census forms to their personnel.

⁷Some Overseas Census Reports were received from private U.S. citizens in the 1950 census, but these persons were not included in the overseas population.

For several reasons, the census figure for private U.S. citizens abroad represented an undercount. Many Americans abroad, especially those living in remote areas, may not have been aware that a census was being taken or, if aware, may not have been able to get to a U.S. embassy or consulate to obtain an Overseas Census Report. Still others may have elected not to participate, as the census for these persons necessarily had to be done on a voluntary basis. Embassy and consulate lists of Americans living in their jurisdictions generally were outdated and incomplete, since there was no requirement that U.S. citizens register with them upon entering or leaving the country. Thus, these offices had no way of distributing census reports except when Americans came there voluntarily to obtain a form. Also, involvement of the embassies was voluntary, with no funding support from either the State Department or the Census Bureau. More than likely, the understatement differed substantially from one geographic area to another and from one category of private American citizen living abroad to another.

Residence Rules

Entries relating to the overseas population in the table of residence rules contained in the 1960 *Enumerator's Reference Manual* for stateside enumeration were the following:

Type of Person	Resident of—
Officer or crew member of merchant vessel engaged in...foreign transportation:	
If vessel ordinarily engages in trips of more than 24 hours' duration.	ED (enumeration district) in which vessel is located on census date (April 1)
American citizen abroad:	
Employed by U.S. Government with place of duty abroad or member of the family of such person living with him.	DO NOT ENUMERATE
Any other American working or living abroad for extended period of time.	DO NOT ENUMERATE

1970 CENSUS

The U.S. population abroad reported in the 1970 census was 1,737,836. As of April 1, 1970, this figure comprised—

- land-based U.S. military personnel stationed abroad and their dependents living with them.
- crews of U.S. Navy vessels deployed to the 6th or 7th Fleets.
- Federal civilian employees stationed abroad and their dependents living with them.
- crews of vessels in the U.S. merchant marine at sea with a foreign port as their destination or docked in a foreign port.
- private U.S. citizens living abroad for an extended period and their dependents living with them.⁸

Both administrative records and direct enumeration were used to obtain counts of Americans overseas in 1970. Data for the Army, Air Force, and Marine Corps personnel stationed abroad were provided by the Department of Defense (DOD) from its administrative records, rather than by direct enumeration on census forms. Enumeration of Navy personnel and all other Americans abroad or at sea was conducted by means of specially designed census report forms, with the cooperative efforts of the DOD, Department of State, Coast Guard, and Maritime Administration. These agencies took responsibility for the publicity of the census as well as for the distribution and collection of the forms. In addition, heightened efforts were made to obtain reports for private U.S. citizens living abroad for an extended period.

For the 1970 census, "living abroad" was defined as residing outside the 50 States, the District of Columbia, or a U.S. commonwealth or territory (the Commonwealth of Puerto Rico, American Samoa, Canal Zone, Guam, U.S. Virgin Islands, and the Trust Territory of the Pacific Islands). For purposes of calculating the apportionment, however, the overseas population was augmented by the inclusion of members of the Armed Forces, Federal civilian employees, and their dependents who were living in a U.S. commonwealth or territory and reported a home State.

As in 1960, a separate report was issued on *Americans Living Abroad*, PC(2)-10A, which provided social and economic characteristics of the civilian population abroad.

The Apportionment Population for 1970

In 1970, officially for the first time, certain segments of the overseas population were allocated to their home State and were included in the population of those States for apportionment of seats in the U.S. House of Rep-

⁸The enumeration of these persons was done on a voluntary basis, and this group was not so well reported as other overseas groups covered by the census.

resentatives. In all previous censuses, the apportionment population consisted solely of the resident population of the 50 States (excluding the population of the District of Columbia) and did not include the overseas population. The two major reasons for the change in the procedure were the larger number of persons (both military and civilian) overseas in 1970 and the congressional support reflected in the recommendation of the House Subcommittee on Census and Statistics to include these persons.

The overseas military and Federal civilian population assigned to a home State, and their dependents living with them, numbered 1,580,998⁹ on April 1, 1970. Excluding the 6,461 persons reporting a home in the District of Columbia, 1,574,537 persons were added to the resident population of the 50 States for calculating the congressional apportionment. This represented less than 1 percent (.77 percent) of the total resident population. The apportionment population based on the 1970 census is shown in table 5.

The segments of the overseas population included in the apportionment count were the following:¹⁰

- U.S. military personnel (including crews of military vessels) who were stationed in a U.S. commonwealth or territory or in a foreign country and reported a home State, and their spouses and children living with them.
- Federal civilian employees stationed in a U.S. commonwealth or territory who reported a home State, and their spouses and children living with them.
- Federal civilian employees stationed in a foreign country who were U.S. citizens or reported a home State, and their spouses and children living with them.
- Other relatives living abroad with persons in the above groups who were U.S. citizens or reported a home State.

Although these persons were added to the resident population of their respective home States for apportionment purposes, they were not distributed among the political subdivisions of the State. Thus, congressional districts within each State were drawn using resident population counts, exclusive of the overseas population. In addition, except for a few special cases, these persons were not included in the tables of 1970 census reports.

Land-Based Armed Forces, Federal Civilian Employees, and Dependents

For members of the Army, Air Force, and Marine Corps stationed overseas as of April 1, 1970, the DOD provided tabulations by State of "home of record" from its own administrative records. However, persons overseas such as dependents of these Armed Forces personnel, other

⁹Differs from the figure of 1,737,836 by the inclusion of U.S. military personnel, Federal civilian employees, and their dependents (95,403) stationed in a U.S. commonwealth or territory and the exclusion of private U.S. citizens living abroad for an extended period (236,336) and crews (15,910) of U.S. merchant marine vessels at sea with a foreign port as their destination or in a foreign port.

¹⁰Not included were crews of U.S. merchant marine vessels at sea with a foreign port as their destination or in a foreign port.

Table 5. Apportionment Population Based on the 1970 Census

State	Apportionment population	Resident population		United States population abroad ¹				Dependents of Federal employees
		Number	Percent distribution	Total		Federal employees		
				Number	Percent distribution	Armed Forces	Civilian	
United States	204 053 325	² 203 235 298	100.00	1 580 998	100.00	1 076 431	67 993	436 574
Alabama	3 475 885	3 444 165	1.69	31 720	2.01	22 121	786	8 813
Alaska	304 067	302 173	.15	1 894	.12	1 304	114	476
Arizona	1 787 620	1 772 482	.87	15 138	.96	9 866	652	4 620
Arkansas	1 942 303	1 923 295	.95	19 008	1.20	13 027	443	5 538
California	20 088 863	19 953 134	9.82	145 729	9.22	93 511	9 547	42 671
Colorado	2 226 771	2 207 259	1.09	19 512	1.23	12 585	961	5 966
Connecticut	3 050 693	3 032 217	1.49	18 476	1.17	12 881	1 049	4 746
Delaware	551 928	548 104	.27	3 824	.24	2 678	145	1 001
District of Columbia	(³)	756 510	.37	6 461	.41	3 139	841	2 481
Florida	6 855 702	6 789 443	3.34	66 259	4.19	38 948	3 391	23 920
Georgia	4 627 306	4 589 575	2.26	37 731	2.39	26 151	975	10 605
Hawaii	784 901	769 513	.38	14 988	.95	6 151	2 042	6 795
Idaho	719 921	713 008	.35	6 913	.44	4 362	281	2 270
Illinois	11 184 320	11 113 876	5.47	70 344	4.45	50 769	2 725	16 850
Indiana	5 228 156	5 183 669	2.56	34 487	2.18	25 454	943	8 090
Iowa	2 846 920	2 825 041	1.36	21 879	1.38	16 069	796	5 014
Kansas	2 265 846	2 249 071	1.11	16 775	1.06	10 812	650	5 313
Kentucky	3 246 481	3 219 311	1.58	27 170	1.72	20 136	525	6 507
Louisiana	3 672 006	3 643 180	1.79	28 828	1.82	20 969	658	7 201
Maine	1 006 320	993 663	.49	12 657	.80	7 754	540	4 363
Maryland	3 953 698	3 922 399	1.93	31 299	1.98	19 542	2 215	9 542
Massachusetts	5 725 676	5 689 170	2.80	37 506	2.37	25 123	2 092	10 291
Michigan	8 937 196	8 875 363	4.37	62 113	3.93	46 329	1 925	13 859
Minnesota	3 833 173	3 805 069	1.87	26 104	1.78	20 806	1 167	6 131
Mississippi	2 233 848	2 216 912	1.09	16 936	1.07	11 741	443	4 752
Missouri	4 718 034	4 677 399	2.30	40 635	2.57	30 438	1 151	9 046
Montana	701 573	694 409	.34	7 164	.45	5 113	312	1 739
Nebraska	1 496 920	1 480 791	.73	13 029	.82	8 939	464	3 626
Nevada	492 396	488 738	.24	3 658	.23	2 028	310	1 320
New Hampshire	746 284	737 681	.36	6 603	.41	5 446	550	2 607
New Jersey	7 208 035	7 168 164	3.53	39 871	2.52	26 905	2 412	10 554
New Mexico	1 026 664	1 016 000	.50	10 664	.67	6 680	529	3 455
New York	18 338 055	18 241 266	8.98	96 789	6.12	70 316	4 741	21 732
North Carolina	5 125 230	5 082 059	2.50	43 171	2.73	31 268	1 009	10 894
North Dakota	524 181	517 781	.25	5 420	.41	4 432	243	1 745
Ohio	10 730 200	10 652 017	5.24	78 183	4.95	57 807	2 460	17 916
Oklahoma	2 585 486	2 559 253	1.26	26 233	1.66	17 273	870	8 090
Oregon	2 110 810	2 091 385	1.03	19 425	1.23	13 614	926	4 885
Pennsylvania	11 884 314	11 793 909	5.80	90 405	5.72	62 043	3 368	24 994
Rhode Island	937 798	949 723	.47	8 075	.51	5 374	371	2 330
South Carolina	2 617 320	2 590 516	1.27	26 804	1.70	19 043	490	7 271
South Dakota	673 247	666 257	.33	6 990	.44	4 792	244	1 954
Tennessee	3 961 060	3 924 154	1.93	36 896	2.33	26 375	827	9 694
Texas	11 298 787	11 196 730	5.51	102 057	6.46	63 915	3 658	34 484
Utah	1 067 810	1 059 273	.52	8 537	.54	5 582	381	2 574
Vermont	448 327	444 732	.22	3 595	.23	2 229	177	1 189
Virginia	4 690 742	4 648 494	2.29	42 248	2.67	26 721	2 547	12 980
Washington	3 443 467	3 409 189	1.68	34 318	2.17	20 784	2 427	11 107
West Virginia	1 783 331	1 744 237	.86	19 094	1.21	13 055	471	5 568
Wisconsin	4 447 013	4 417 833	2.17	29 080	1.84	22 264	978	5 638
Wyoming	335 719	332 416	.16	3 303	.21	1 965	171	1 187

Source: 1970 Census of Population, Volume I, *Characteristics of the Population, Number of Inhabitants*, United States Summary, table A.¹Includes U.S. military and Federal civilian employees and their dependents who were living in (1) a U.S. commonwealth or territory and reported a home State or (2) a foreign country and were U.S. citizens or reported a home State.²Differs from the population of 203,211,926 shown in the detailed 1970 census tables because of revisions made after the tabulations were completed.³The population of the District of Columbia is not included in the apportionment population.

land-based Armed Forces personnel, Federal civilian employees, and the overseas dependents of these two groups were self-enumerated on the Overseas Census Report (Form D-23).

The DOD and Coast Guard (in the Department of Transportation) distributed and collected census reports for their land-based overseas personnel for whom counts were not provided from administrative records. Thus, land-based Navy and Coast Guard personnel, all military dependents, and DOD civilian employees and their dependents were enumerated on report forms.

The Department of State handled the enumeration of other overseas Federal employees and their dependents abroad through its embassies and other diplomatic and consular posts. Completed report forms were returned to the embassies and consulates and shipped to the Jeffersonville, IN, Census Operations Office for processing.

Dependents of Federal employees included the spouse, children, and other relatives who were living in the household of an overseas Federal employee (military or civilian) and were reported on an Overseas Census Report. Spouses and children were included regardless of citizenship or previous residence; other relatives were included if they were U.S. citizens (item 12) or reported a home State (item 10). To avoid double counting, spouses, children, or other relatives who were themselves Federal employees were excluded from the count of dependents (but were included in the count of Federal employees).

Crews of Military and Merchant Marine Vessels

These components comprised crews of U.S. Navy vessels deployed to the 6th (Atlantic) or 7th (Pacific) Fleets on April 1, 1970, and crews of U.S. merchant marine vessels at sea with a foreign port as their destination or in a foreign port on April 1, 1970. These persons were self-enumerated on the Report for Military and Maritime Personnel (Form D-21). Crews of military vessels were included in the apportionment population, but crews of merchant vessels were not. Only persons affiliated with the Federal Government were included in the apportionment population.

In the 1960 census and several previous censuses, only those Navy vessels berthed in a U.S. port on April 1 were counted in the resident population of the United States. Vessels in transit from one port to another or in a foreign port were classified as "at sea," and the crews were counted in the overseas population. This procedure created some assignment difficulties with regard to naval vessels on brief training cruises or those in transit between one U.S. port and another.

In view of these ambiguities, the Census Bureau decided in 1970 to assign Navy vessels on foreign assignment ("deployed") to the overseas population and remaining vessels to their "home port" as designated by the Navy Department. It was believed this procedure would more likely count naval crews in the jurisdictions in which they had dependents, owned property, and maintained other community ties.

Supplies of the Report for Military and Maritime Personnel were shipped to the captains of Navy and Coast Guard vessels in port or at sea, with the cooperation of the DOD and Coast Guard. Report forms for merchant marine vessels were shipped to the masters of these vessels through shipowner/operators, with the cooperation of the Maritime Administration. Forms were distributed by ship captains or masters to the crews of their vessels on April 1, 1970. Completed forms were collected and shipped directly to the Jeffersonville, IN, Census Operations Office.

Assigning Home State

Several methods were used to assign home State for those segments of the 1970 overseas population included in the apportionment population:

- For overseas Army, Air Force, and Marine Corps personnel, DOD assigned home State on the basis of their "home of record" from DOD personnel files.
- For overseas dependents of above Armed Forces personnel, other overseas land-based Armed Forces personnel, Federal civilian employees, and the overseas dependents of the latter two groups, the Census Bureau assigned home State from responses to item 10 on the 1970 Overseas Census Report (Form D-23).
- For crews of deployed U.S. naval vessels, the Census Bureau assigned home State from responses to item 2 on the 1970 Report for Military and Maritime Personnel (Form D-21).

Questions 2 and 10 asked for "home State" and instructed the respondents to write in their "State of voting residence, legal residence, or home of record, etc."

Private U.S. Citizens

This component of the American population abroad consisted of U.S. citizens living abroad for an extended period and not affiliated with the Federal Government who obtained and filled out an Overseas Census Report (Form D-23). Included in this group were private business persons, contract workers on military installations, employees of foreign governments and international organizations, retired persons, missionaries and religious workers, students, teachers, expatriates, and their family members (some of whom may not have been U.S. citizens).

Although this component was included in the published 1970 census overseas population figure (1,737,836), it was not included in the apportionment population. Only persons affiliated with the Federal Government were included in the apportionment population.

The State Department coordinated the enumeration of these persons through its embassies and consular offices. These offices made forms available for Americans living in their service areas to pick up, received the completed forms, and returned them to the Census Bureau for processing.

The Census Bureau launched an intensive effort in 1970 to publicize the enumeration of this civilian population overseas. It contacted such groups as the U.S. Chamber of Commerce, religious institutions with missionaries abroad, newspapers and other media with foreign bureaus, businesses and corporations with overseas field offices, and universities with overseas branches and study abroad programs and requested that they notify their U.S. personnel abroad of the census undertaking and encourage their participation. A special flyer (70-82-2) was circulated overseas and displayed in places where it would receive maximum exposure (office bulletin boards, American clubs, English language movie theaters, etc.) to announce the 1970 census enumeration of U.S. citizens abroad.

For several reasons, the count of private U.S. citizens living abroad was not complete. Many Americans abroad, especially those living in remote areas, may not have been aware that a census was being taken or, if aware, may not have been able to get to a U.S. embassy or consulate to obtain an Overseas Census Report. In addition, this category included persons legally having dual citizenship—a combination of U.S. and second-nation citizenship—who might have been uncertain or ambivalent about being included in the U.S. census. Still others may have elected not to participate, as the census for these persons necessarily had to be done on a voluntary basis. Embassy and consulate lists of Americans living in their jurisdictions generally were outdated and incomplete, since there was no requirement that U.S. citizens register with them upon entering or leaving the country. Thus, these offices had no way of distributing census reports except when Americans came there voluntarily to obtain a form. There also was wide variation among U.S. embassies in the levels of commitment and effort devoted to obtaining an accurate count. Some ran elaborate ads, mailed census reports, along with franked return envelopes, to persons registered

with them, and so forth, while others did virtually nothing. Also, involvement of the embassies was voluntary, with no funding support from either the State Department or the Census Bureau. More than likely, the understatement differed substantially from one geographic area to another and from one type of private American citizen living abroad to another.

A post-1970 census comparison of data from the 1970 overseas census with country of birth/citizenship data from individual foreign censuses indicated that the census counts for private U.S. citizens represented a substantial undercount, particularly in Canada and Mexico, where the underenumeration probably exceeded 90 percent.

Residence Rules

Entries relating to the overseas population in the table of residence rules contained in the 1970 *Questionnaire Reference Book* for stateside enumeration were the following:

<i>Type of Person</i>	<i>Resident of—</i>
Member of the Armed Forces:	
Assigned to a military vessel.	The vessel
Officer or crew member of merchant vessel engaged in... foreign transportation.	The vessel
American citizen abroad:	
Employed by U.S. Government with place of duty abroad or member of the family of such person living with him.	This is a special case. DO NOT LIST
Any other American working or living abroad for extended period of time.	DO NOT LIST

**D-23, Overseas Census Report
(Front)**



**THIS IS YOUR OFFICIAL
1970 OVERSEAS CENSUS REPORT**

This form is for Americans living outside the United States, Puerto Rico, American Samoa, Canal Zone, Guam, Virgin Islands, and Trust Territory of the Pacific Islands on Census Day - April 1, 1970.

1. Please complete this form on April 1, 1970, or as soon afterward as you can.
 - This form is being distributed through several sources to enable the greatest number of Americans overseas to be counted in the 1970 Census. If you receive more than one copy, please do not fill the duplicates.
2. Please include the following people on this form -
 - Family members living here with you (wife, son, daughter, mother, father, etc.).
 - Any other persons living here with you who are Americans.

Also include any of your children who are away attending school below college level.
3. Members of the Armed Forces (and other Defense Department personnel) should return the completed form to the appropriate person on the post, in accordance with local arrangements.
 Civilians should return the completed form (in person or by mail) to the nearest U.S. Embassy or Consular Office in the country in which they are living.
 - Name of country in which this form is being returned _____
 - Also, for members of Armed Forces:
 - a. Name of person _____
 - b. Name of installation at which stationed _____
4. Your cooperation in carefully filling out this form and returning it will help make the census successful.
 - If you are not sure of an answer, give the best answer you can.
 - If there are more than four persons, list them on an additional form or sheet of paper. Fold the extra form or sheet inside this form before sealing.

NOTICE - Your answers are **CONFIDENTIAL** by law (Title 13, United States Code). The information you provide will be used only for statistical purposes and cannot, by the same law, be disclosed to any person outside the Census Bureau for any reason whatsoever. A 1970 Census report must be filled by members of the Armed Forces and by civilian American citizens employed by the U.S. Government who are living abroad; filing is discretionary for other Americans living abroad.

U.S. Department of Commerce
Bureau of the Census
Form D-23

Budget Bureau No. 41-570002
Approval Expires December 31, 1970

AMERICANS OVERSEAS IN U.S. CENSUSES

D-23, Overseas Census Report
(Back, bottom)

<p>1. NAME, DATE, AND PLACE OF BIRTH (If born in U.S., give date and place of birth; if born abroad, give date and place of birth, and date and place of arrival in U.S.)</p> <p>2. SEX, AGE, AND MARITAL STATUS (If married, give date of marriage; if divorced, give date of divorce; if widowed, give date of death of spouse)</p> <p>3. OCCUPATION (If self-employed, give name of business; if employed, give name of employer and position held)</p> <p>4. EDUCATION (If attended school, give name of school and grade completed; if not, give highest grade completed)</p> <p>5. CITIZENSHIP (If naturalized, give date of naturalization; if not, give date of arrival in U.S. and date of declaration of intent)</p> <p>6. RELIGION (If any, give name of religion)</p> <p>7. ETHNIC ORIGIN (If any, give name of ethnic or racial group)</p> <p>8. LANGUAGES (If any, give name of language spoken at home and date of acquisition)</p> <p>9. MILITARY SERVICE (If any, give name of service, dates, and positions held)</p> <p>10. ACHIEVEMENTS (If any, give name of achievement and date)</p> <p>11. OTHER (If any, give name of other information)</p>	<p>1. NAME, DATE, AND PLACE OF BIRTH (If born in U.S., give date and place of birth; if born abroad, give date and place of birth, and date and place of arrival in U.S.)</p> <p>2. SEX, AGE, AND MARITAL STATUS (If married, give date of marriage; if divorced, give date of divorce; if widowed, give date of death of spouse)</p> <p>3. OCCUPATION (If self-employed, give name of business; if employed, give name of employer and position held)</p> <p>4. EDUCATION (If attended school, give name of school and grade completed; if not, give highest grade completed)</p> <p>5. CITIZENSHIP (If naturalized, give date of naturalization; if not, give date of arrival in U.S. and date of declaration of intent)</p> <p>6. RELIGION (If any, give name of religion)</p> <p>7. ETHNIC ORIGIN (If any, give name of ethnic or racial group)</p> <p>8. LANGUAGES (If any, give name of language spoken at home and date of acquisition)</p> <p>9. MILITARY SERVICE (If any, give name of service, dates, and positions held)</p> <p>10. ACHIEVEMENTS (If any, give name of achievement and date)</p> <p>11. OTHER (If any, give name of other information)</p>	<p>1. NAME, DATE, AND PLACE OF BIRTH (If born in U.S., give date and place of birth; if born abroad, give date and place of birth, and date and place of arrival in U.S.)</p> <p>2. SEX, AGE, AND MARITAL STATUS (If married, give date of marriage; if divorced, give date of divorce; if widowed, give date of death of spouse)</p> <p>3. OCCUPATION (If self-employed, give name of business; if employed, give name of employer and position held)</p> <p>4. EDUCATION (If attended school, give name of school and grade completed; if not, give highest grade completed)</p> <p>5. CITIZENSHIP (If naturalized, give date of naturalization; if not, give date of arrival in U.S. and date of declaration of intent)</p> <p>6. RELIGION (If any, give name of religion)</p> <p>7. ETHNIC ORIGIN (If any, give name of ethnic or racial group)</p> <p>8. LANGUAGES (If any, give name of language spoken at home and date of acquisition)</p> <p>9. MILITARY SERVICE (If any, give name of service, dates, and positions held)</p> <p>10. ACHIEVEMENTS (If any, give name of achievement and date)</p> <p>11. OTHER (If any, give name of other information)</p>	<p>1. NAME, DATE, AND PLACE OF BIRTH (If born in U.S., give date and place of birth; if born abroad, give date and place of birth, and date and place of arrival in U.S.)</p> <p>2. SEX, AGE, AND MARITAL STATUS (If married, give date of marriage; if divorced, give date of divorce; if widowed, give date of death of spouse)</p> <p>3. OCCUPATION (If self-employed, give name of business; if employed, give name of employer and position held)</p> <p>4. EDUCATION (If attended school, give name of school and grade completed; if not, give highest grade completed)</p> <p>5. CITIZENSHIP (If naturalized, give date of naturalization; if not, give date of arrival in U.S. and date of declaration of intent)</p> <p>6. RELIGION (If any, give name of religion)</p> <p>7. ETHNIC ORIGIN (If any, give name of ethnic or racial group)</p> <p>8. LANGUAGES (If any, give name of language spoken at home and date of acquisition)</p> <p>9. MILITARY SERVICE (If any, give name of service, dates, and positions held)</p> <p>10. ACHIEVEMENTS (If any, give name of achievement and date)</p> <p>11. OTHER (If any, give name of other information)</p>
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70-82-2, Official Notice to All Americans
Living Overseas



UNITED STATES CENSUS
OFFICIAL NOTICE TO ALL AMERICANS LIVING OVERSEAS

- The Decennial Census is now being taken.
- Make sure you are counted in the 1970 Census--all Americans are counted, whether at home or abroad.
- Get your census form from any U.S. embassy or consulate.
- Fill out and return your census form by April 1, or as soon afterward as possible.
- By law, your answers are confidential--the results are used only for statistical purposes.
- Remember: All Americans are counted every ten years; be sure you are included.



Form 70-82-2

U.S. DEPARTMENT OF COMMERCE / Bureau of the Census



1990 CENSUS

The U.S. population abroad reported in the 1990 census was 925,845. As of April 1, 1990, this figure comprised—

- land-based U.S. military personnel stationed abroad and their dependents living with them.
- crews of U.S. Navy vessels assigned to the 6th or 7th Fleets.
- Federal civilian employees stationed abroad and their dependents living with them.
- crews of vessels in the U.S. merchant marine sailing from one foreign port to another or docked in a foreign port.

Using administrative records and the results of a civilian survey, the Department of Defense (DOD) provided counts of both its military and civilian employees stationed abroad and their dependents living with them. Counts of other overseas Federal employees and their dependents abroad were provided by the employing agencies, principally from administrative records. Crews of U.S. merchant marine vessels were enumerated with the cooperation of the Maritime Administration and shipowners.

For the 1990 census, "living overseas" was defined as residing outside the 50 States and the District of Columbia. Thus, members of the Armed Forces, Federal civilian employees, and their dependents—who were living in a U.S. commonwealth or territory (Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau) and reported a home State—were included in the overseas population.¹¹ In the 1950-80 censuses, persons in these categories living in a U.S. commonwealth or territory were not included in the overseas population. In the 1970 census, however, persons in these categories living in a U.S. commonwealth or territory who reported a home State were included in the overseas population only for the purpose of calculating the apportionment.

The Apportionment Population for 1990

As a result of widespread bipartisan support in the Congress late in the 1980 decade, the Census Bureau decided in 1989 to include overseas U.S. Armed Forces and Federal civilian employees, and their dependents living with them, in the 1990 census population counts for States for purposes of computing congressional apportionment. Such persons were neither distributed among the political subdivisions of the State nor included in any other tabulations. Thus, congressional districts within each State were drawn using resident population counts, exclusive of the overseas population.

¹¹Federally-affiliated personnel (and their dependents living with them) assigned by stateless departments and agencies to a U.S. commonwealth or territory were reported by the employing departments and agencies and included in the counts for the respective U.S. home States for apportionment purposes. For example, a resident of Maryland hired by a Federal agency and stationed in the U.S. Virgin Islands was included in the overseas population. In contrast, a resident of the Virgin Islands hired by the same Federal agency in the Virgin Islands was not counted in the overseas population.

The overseas military and Federal civilian population assigned to a home State, and selected dependents living with them, numbered 922,819¹² on April 1, 1990. Excluding the 3,009 persons who designated the District of Columbia as their home jurisdiction, 919,810 persons were added to the resident population of the 50 States for calculating the congressional apportionment. This figure represented less than one-half of 1 percent (.37 percent) of the resident population.

Table 6 gives the apportionment population based on the 1990 census.

Armed Forces, Federal Civilian Employees, and Dependents

The Office of Personnel Management (OPM) identified 40 Federal departments and agencies as having employees stationed overseas. The Census Bureau asked these agencies to submit counts of their personnel, by home State, who were overseas on April 1, 1990. The agencies were asked to report their counts on Form D-55, "Overseas Personnel and Dependents—Counts by State of Residence," in accordance with certain guidelines. Participation of Federal agencies in the 1990 census overseas count project is summarized in table 7.

As shown in table 7, 30 of the 40 agencies and departments listed on the OPM inventory submitted home State information for their overseas employees. Most agencies used administrative records to report home State. Of the 30 participating agencies, 20 included dependents in their counts, and 10 did not (table 8).

The DOD, accounting for 98 percent of the overseas total, was able to use administrative records to report home State for its military personnel overseas (including crews of U.S. Navy vessels in the 6th or 7th Fleets) but not its civilian personnel. To count this group, the DOD conducted the 1990 Survey of DOD Overseas Civilian Personnel and Dependents, using a short, self-administered questionnaire. Civilian employees known also to be dependents of military personnel were excluded from the survey because they were counted from the administrative records of their military sponsors.

The DOD counts of overseas Armed Forces, DOD civilian personnel, and their dependents are shown by home State in table 9. Before submission to the Census Bureau, the counts were reviewed and certified within each branch of the Armed Forces.

The Federal Emergency Management Agency (FEMA) received no response to its survey of three overseas employees (and an unknown number of dependents) and reported a count of zero. The Peace Corps reported that its records did not contain home State information and declined to participate.¹³

¹²Differs from the figure of 925,845 by the exclusion of crews (3,026) of U.S. merchant marine vessels sailing from one foreign port to another or in a foreign port.

¹³The OPM estimated that the Peace Corps had 483 overseas employees, and the Peace Corps Public Information Office reported by telephone that the agency had approximately 6,300 overseas volunteers. These unofficial estimates were not included in the overseas population.

Table 6. Apportionment Population Based on the 1990 Census

State	Apportionment population	Resident population		United States population abroad ¹	
		Number	Percent distribution	Number	Percent distribution
United States	249 022 783	248 709 873	100.00	922 819	100.00
Alabama	4 082 608	4 040 587	1.62	22 021	2.39
Alaska	551 947	550 043	0.22	1 904	0.21
Arizona	3 677 885	3 685 228	1.47	12 757	1.38
Arkansas	2 362 239	2 350 725	0.95	11 514	1.25
California	29 839 250	29 760 021	11.97	79 229	8.59
Colorado	3 307 912	3 294 394	1.32	13 518	1.46
Connecticut	3 285 689	3 287 116	1.32	8 553	0.93
Delaware	688 686	686 168	0.27	2 528	0.27
District of Columbia	(²)	606 900	0.24	3 009	0.33
Florida	13 003 362	12 937 926	5.20	65 436	7.09
Georgia	6 508 419	6 478 216	2.60	30 203	3.27
Hawaii	1 115 274	1 108 229	0.45	7 045	0.76
Idaho	1 011 886	1 006 749	0.40	5 237	0.57
Illinois	11 466 682	11 430 602	4.60	36 080	3.91
Indiana	5 584 228	5 544 159	2.23	20 069	2.17
Iowa	2 787 424	2 776 755	1.12	10 668	1.16
Kansas	2 485 600	2 477 574	1.00	8 026	0.87
Kentucky	3 698 989	3 685 296	1.48	13 673	1.48
Louisiana	4 238 216	4 219 973	1.70	18 243	1.98
Maine	1 233 223	1 227 928	0.49	5 295	0.57
Maryland	4 786 622	4 781 488	1.92	17 154	1.86
Massachusetts	6 029 051	6 016 425	2.42	12 628	1.37
Michigan	9 328 784	9 295 297	3.74	33 487	3.63
Minnesota	4 387 029	4 375 099	1.76	11 930	1.29
Mississippi	2 586 443	2 573 216	1.03	13 227	1.43
Missouri	5 137 804	5 117 073	2.06	20 731	2.25
Montana	803 655	799 065	0.32	4 590	0.50
Nebraska	1 584 517	1 578 385	0.63	6 232	0.68
Nevada	1 206 152	1 201 833	0.48	4 315	0.47
New Hampshire	1 113 915	1 109 252	0.45	4 663	0.51
New Jersey	7 748 634	7 730 188	3.11	18 446	2.00
New Mexico	1 521 779	1 515 069	0.61	6 710	0.73
New York	18 044 505	17 990 455	7.23	54 050	5.86
North Carolina	6 657 630	6 628 837	2.67	28 993	3.14
North Dakota	641 364	638 800	0.26	2 564	0.28
Ohio	10 887 325	10 847 116	4.36	40 210	4.36
Oklahoma	3 157 604	3 145 585	1.26	12 019	1.30
Oregon	2 853 733	2 842 321	1.14	11 412	1.24
Pennsylvania	11 924 710	11 881 643	4.78	43 067	4.67
Rhode Island	1 005 984	1 003 464	0.40	2 520	0.27
South Carolina	3 505 707	3 486 703	1.40	19 004	2.06
South Dakota	699 999	696 004	0.28	3 995	0.43
Tennessee	4 896 641	4 877 185	1.96	19 456	2.11
Texas	17 050 805	16 988 510	6.83	73 235	7.94
Utah	1 727 784	1 722 850	0.69	4 834	0.53
Vermont	564 964	562 758	0.23	2 206	0.24
Virginia	6 218 568	6 187 358	2.49	29 210	3.17
Washington	4 887 841	4 866 092	1.96	21 248	2.30
West Virginia	1 801 625	1 793 477	0.72	8 148	0.88
Wisconsin	4 906 745	4 891 769	1.97	14 976	1.62
Wyoming	455 975	453 588	0.18	2 387	0.26

Source: Resident population—Census and You, Volume 26, No. 4, April 1991. U.S. population abroad—U.S. Department of Commerce Press Release, C891-07.

¹Includes U.S. military and Federal civilian employees and their dependents who were living in a U.S. commonwealth or territory or a foreign country and were reported by their employing agency as having a home State.

²The population of the District of Columbia is not included in the apportionment population.

Table 7. Summary of Federal Agency Participation in the 1990 Census Overseas Count Project

40 agencies—were identified by OPM as having overseas employees; of these:
30 agencies—reported figures by home State (20 included dependents; 10 did not)
1 agency—(FEMA) reported that its 3 overseas employees did not respond to its survey for home State information
1 agency—(Peace Corps) declined to participate as its administrative records did not contain home State information
8 agencies—were found to be out of scope; their overseas employees were actually local residents of the foreign countries or the U.S. commonwealths or territories where they were working

Table 8. Overseas U.S. Armed Forces, Federal Civilian Employees, and Dependents, by Federal Agency: 1990

Employing Federal agency	Assigned to a home State
Total, 30 agencies	222 819
Department of Defense	901 880
Department of State	13 581
Panama Canal Commission	2 287
Department of Transportation ^a	1 271
Agency for International Development ^a	1 154
Department of Justice	1 025
Department of Commerce	514
Department of Agriculture	258
Department of the Treasury	152
United States Information Agency ^a	138
American Battle Monuments Commission	110
General Accounting Office	80
Department of the Interior ^a	81
United States Secret Service	56
General Services Administration ^a	47
Smithsonian Institution	33
Department of Labor	26
Department of Health and Human Services ^a	20
Department of Veterans Affairs	20
Library of Congress	17
Office of Personnel Management	17
Office of the U.S. Trade Representative	13
Department of Energy	10
International Joint Commission	9
National Aeronautics and Space Administration ^a	8
National Science Foundation	8
United States Postal Service	8
Environmental Protection Agency ^a	4
Department of Housing and Urban Development ^a	1
Federal Communications Commission	1

Source: Administrative records from employing agency and 1990 Survey of DOD Overseas Civilian Personnel and Dependents.

^aExcludes 9,450 persons overseas whose home State could not be determined (Defense, 8,731; U.S. Information Agency, 718; Transportation, 6; and Agriculture, 5).

^bDid not include dependents in its counts (10 agencies).

Eight agencies reported they had no overseas employees as defined for the 1990 census overseas count project. Although OPM had identified the agencies as having overseas employees, the persons were found to be

local residents of the U.S. commonwealths or territories or of the foreign countries where they were working, rather than stationed to one of these areas from the United States. Thus, they were not to be included in the overseas count, and their agencies were removed from the overseas inventory. The agencies were as follows:

ACTION

Administrative Office of the United States Courts
Department of Education
Federal Deposit Insurance Corporation
Federal Maritime Commission
National Credit Union Administration
National Labor Relations Board
Small Business Administration

Also excluded were 16,999 persons (16,899 DOD and 100 Coast Guard) whose home "State" was a U.S. commonwealth or territory.

Assigning Home State

Several methods were used to assign home State for the 1990 overseas population:

- For overseas DOD military personnel, DOD assigned home State on the basis of their "home of record" from DOD active duty personnel files as of March 31, 1990. Home of record reflects the State declared by the military member to be the permanent home at time of entry or reenlistment into the service.¹⁴

To supplement these data for persons whose home of record was missing or who had a home of record outside the United States, DOD matched by Social Security number (SSN) active duty files with Joint Uniformed Military Pay System (JUMPS) files that contained a legal residence State code. Legal residence is the State of residence a military member declares for State income tax withholding purposes.

The remaining personnel with unknown or "out of U.S." legal residence were then matched by SSN against the active duty files for a 3-month earlier period—December 31, 1989—to determine the last U.S. duty station where the member had spent at least 6 months before going overseas. If there was a match for this time period and the member was still overseas, or if there

¹⁴As of 1990, the ability of active duty personnel to change their home of record (HOR) differed by branch of service and type of personnel, as follows:

- Army—For both officers and enlisted personnel, HOR could not be changed.
- Navy and Air Force—For officers, HOR could not be changed. For enlisted personnel, HOR could be changed at reenlistment.
- Marine Corps—For officers, HOR normally could not be changed; rare exceptions could be made, however, requiring documentary proof, such as tax or voting records. For enlisted personnel, HOR could be changed at reenlistment.

was no match, DOD continued to search back in time at 3-month intervals to June 1982, if necessary. Finally, the remaining unmatched records were matched against Military Entrance Processing Command (MEPCOM) data showing first duty station upon entry into the military service.

- For overseas military personnel recorded in "accompanied" status on the JUMPS records, another set of administrative records—the Defense Enrollment Eligibility Reporting System (DEERS)—was used to match military personnel and their overseas dependents. DOD assigned home State for these overseas dependents according to the State allocation of their military sponsor. Personnel assigned to the 6th or 7th Fleet had no dependents accompanying them.
- For overseas DOD civilian personnel, DOD used responses to item 9 of its survey ("In what State did you live when you were first hired by DOD as a civilian employee?") as the equivalent of "home of record." When item 9 was blank or "Outside U.S." was marked, item 10 (legal residence) was used. When both items 9 and 10 were blank, or "Outside U.S." was marked, item 8 (last State of residence of at least 6 months duration) was used. Persons not providing responses to items 8-10 were excluded from the tabulations.
- For overseas dependents of DOD civilian personnel, DOD assigned home State according to the same methodology used for DOD civilian personnel. The count of dependents was derived from cross-tabulating item 7 (number of dependents living with civilian personnel) and item 9 (or item 10 or 8). Civilian employees were to include their spouse and anyone else related to them by blood, marriage, or adoption or who depended on them for more than half of the dependent's support. Civilian employees were not to include dependents who were military members themselves.
- For overseas employees of the other 29 participating Federal agencies reporting their counts on Census Bureau Form D-55, home State was to be assigned according to guidelines provided by the Census Bureau. The agencies were instructed to "consider as the State of residence the U.S. State that the person claims as his/her home when he/she is overseas. It is *not necessarily* the individual's official duty station or place of work."

Home of record was the method of assigning home State for the vast majority of the 1990 overseas population. It was the basis of assigning home State for about 92 percent of DOD's 874,205 overseas military personnel and dependents, representing about 87 percent of the total 1990 overseas count of 922,819.

Four participating agencies could not provide a home State for all their overseas employees. Altogether, home State could not be determined for 9,460 persons (DOD,

8,731; U.S. Information Agency, 718; Department of Transportation, 6; and Department of Agriculture, 5). These persons were excluded from the overseas population.

Duplication of Overseas Counts

The reporting guidelines the Census Bureau furnished to agencies specified that agencies were to avoid duplicate reporting in cases where family members worked overseas for different Federal agencies or where Federal civilian employees were also dependents of overseas military personnel.

To eliminate duplication of counts within its own department, DOD matched Social Security numbers to remove those overseas DOD civilian employees—who were also dependents of military personnel overseas—from its civilian survey.

The State Department, whose overseas employees accounted for nearly two-thirds of the non-DOD overseas population, excluded dependents of other agency personnel from its departmental overseas counts. The Panama Canal Commission, known to have a large number of its employees who were also dependents of military personnel, excluded these military dependents from its counts.

Comparison of DOD's Count Submission With Previous DOD Estimate

A press release from the Department of Commerce on August 1, 1989, cited an overseas DOD population ranging from 1.2 to 1.6 million persons. This was a rough estimate, provided directly to the Commerce Department by DOD. The DOD's final count submission of 901,880 overseas personnel and dependents, which was based on both its administrative records and survey results, was considerably lower than the estimate. The following factors contributed to this difference:

- The DOD estimated range was for a period in time when the levels of military deployments overseas were higher than on April 1, 1990.
- The DOD estimated range included certain Navy personnel that were not within scope of the overseas population on Census Day, April 1, 1990. For instance, the estimate included about 180,000 Navy personnel who, by Census Day, were aboard ships docked at homeports. Under the 1990 census rules of residence, these persons were included in the U.S. resident population rather than overseas. In addition, the estimate included Navy personnel assigned to the 6th or 7th Fleets (and thus considered to be overseas) who, by Census Day, were no longer assigned to these fleets.
- Numerous overseas civilians and dependents were missing from DOD's final total because of the low response rate—about 20 percent—to its voluntary mail survey of overseas DOD civilians. Although DOD reported receiving about 49 percent of the questionnaires from its

overseas civilian employees, this figure included postmaster returns of forms that could not be delivered. When postmaster returns were subtracted, the response rate for completed questionnaires was about 20 percent.

Crews of Merchant Marine Vessels

This overseas component comprised crews of U.S. merchant marine vessels sailing from one foreign port to another or docked in a foreign port on April 1, 1990. Also included in this group of vessels were factory trawlers, floating processors, and tuna boats. These crews of vessels were included in the overseas population but were excluded from the apportionment population. Only persons affiliated with the Federal Government were included in the apportionment population.

Crew members and passengers of all merchant vessels were self-enumerated on the Shipboard Census Report (D-23). Report forms were shipped to the master of each vessel through shipowners or operators, with the cooperation of the Maritime Administration and other maritime organizations. Ship captains returned completed reports along with a location report (D-47) to the Census Bureau. According to the location the ship captain reported, crews of merchant vessels sailing from one foreign port to another or docked in a foreign port were included in the overseas population.

Residence Rules

Entries relating to the overseas population in the table of residence rules contained in the 1990 *Questionnaire Reference Book* for stateside enumeration were the following:

<i>Type of person</i>	<i>Resident of—</i>
Person is a member of the Armed Forces:	
Assigned to a military vessel which is "deployed" to the 6th or 7th Fleet	DO NOT LIST
Assigned to a military base outside the United States	DO NOT LIST
Person is an officer or crew member of a merchant vessel engaged in foreign transportation	The merchant vessel
Person is an American citizen overseas:	
Employed by the U.S. Government with place of duty abroad, including family members living with them	DO NOT LIST
Any other American working, studying, or living abroad (for extended period)	DO NOT LIST

Table 9. Department of Defense Overseas Armed Forces, Civilian Employees, and Dependents, by Home State: 1990

State	Total, DOD overseas count (1) = (2) + (5)	Total, Armed Forces and dependents (2) = (3) + (4)	Armed Forces (3)	Dependents (4)	Total, civilians and dependents (5) = (6) + (7)	Civilian employees (6)	Dependents (7)
United States	901 880	674 205	529 269	344 636	27 675	10 745	16 930
Alabama	21 889	21 516	12 557	8 959	373	158	215
Alaska	1 869	1 695	955	740	174	72	102
Arizona	12 485	11 971	7 265	4 706	514	201	313
Arkansas	11 440	11 313	6 770	4 543	127	56	71
California	76 424	72 254	44 744	27 510	4 170	1 569	2 601
Colorado	13 294	12 735	7 844	4 891	559	223	336
Connecticut	8 117	7 893	4 711	3 182	224	98	126
Delaware	2 493	2 443	1 442	1 001	50	19	31
District of Columbia	2 527	2 382	1 419	963	145	67	78
Florida	63 355	61 177	35 717	25 460	2 178	868	1 310
Georgia	30 014	29 391	17 668	11 723	623	240	383
Hawaii	6 894	5 784	3 140	2 644	1 110	422	688
Idaho	5 179	5 075	2 957	2 118	104	38	66
Illinois	35 855	34 631	21 785	13 048	824	335	489
Indiana	19 915	19 570	11 943	7 727	345	136	209
Iowa	10 551	10 409	6 424	3 985	142	57	85
Kansas	7 937	7 685	4 660	3 025	252	103	149
Kentucky	13 591	13 378	8 081	5 294	216	87	129
Louisiana	18 066	17 765	11 141	6 624	301	112	189
Maine	5 180	5 032	3 050	1 982	148	61	87
Maryland	16 028	15 462	9 523	5 939	566	217	349
Massachusetts	12 287	11 884	7 063	4 821	403	161	242
Michigan	33 222	32 692	20 869	11 823	530	207	323
Minnesota	11 815	11 599	7 390	4 209	216	87	129
Mississippi	13 163	12 914	7 706	5 208	249	91	158
Missouri	20 507	20 101	12 012	8 089	406	160	246
Montana	4 519	4 414	2 712	1 702	105	48	57
Nebraska	6 165	6 050	3 689	2 361	115	51	64
Nevada	4 171	3 934	2 334	1 600	237	87	150
New Hampshire	4 435	4 263	2 474	1 789	172	74	98
New Jersey	17 985	17 354	10 618	6 736	631	233	398
New Mexico	6 563	6 273	3 880	2 413	290	113	177
New York	52 752	51 543	30 889	20 654	1 209	443	766
North Carolina	28 759	28 362	17 059	11 323	377	152	225
North Dakota	2 542	2 476	1 592	886	64	24	40
Ohio	39 833	39 235	24 256	14 979	598	235	363
Oklahoma	11 922	11 543	6 861	4 682	379	148	231
Oregon	11 195	10 864	6 753	4 111	331	139	192
Pennsylvania	42 352	41 381	25 409	15 972	971	385	586
Rhode Island	2 457	2 367	1 467	900	90	34	56
South Carolina	18 925	18 662	11 188	7 474	263	108	155
South Dakota	3 895	3 759	2 222	1 537	136	56	80
Tennessee	19 236	18 653	11 040	7 613	383	149	234
Texas	71 718	69 012	40 728	28 284	2 706	1 039	1 667
Utah	4 819	4 388	2 202	2 186	431	129	302
Vermont	2 120	2 081	1 231	850	39	14	25
Virginia	26 109	24 710	14 858	9 854	1 399	535	864
Washington	20 389	19 072	11 592	7 480	1 317	503	814
West Virginia	6 051	7 901	4 722	3 179	150	57	93
Wisconsin	14 768	14 544	9 402	5 142	224	86	138
Wyoming	2 303	2 194	1 377	817	109	40	69

Source: DOD administrative records and 1990 Survey of DOD Overseas Civilian Personnel and Dependents.

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

TITLE 1 —REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

42 USC 1973ff.	SEC. 101. FEDERAL RESPONSIBILITIES.
President of U.S.	(a) PRESIDENTIAL DESIGNEE. — The President shall designate the head of an executive department to have primary responsibility for Federal functions under this title.
State and local governments.	(b) DUTIES OF PRESIDENTIAL DESIGNEE. — The Presidential designee shall— <ol style="list-style-type: none"> (1) consult State and local election officials in carrying out this title; (2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as recommended in section 104; (3) carry out section 103 with respect to the Federal write-in absentee ballot for overseas voters in general elections for Federal office; (4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 104; (5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; and (6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of voter participation and a description of State-Federal cooperation.
Reports.	(c) DUTIES OF OTHER FEDERAL OFFICIALS. — <ol style="list-style-type: none"> (1) IN GENERAL. — The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this title. (2) ADMINISTRATOR OF GENERAL SERVICES. — As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in absentee ballots (prescribed under section 103).
42 USC 1973ff-1.	SEC. 102. STATE RESPONSIBILITIES.
	Each State shall — <ol style="list-style-type: none"> (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office; (2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and (3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office.

42 USC 1973ff-2.

**SEC. 103. FEDERAL WRITE-IN ABSENTEE BALLOT FOR OVERSEAS
VOTERS IN GENERAL ELECTIONS FOR FEDERAL OFFICE.**

State and local
governments.

(a) **IN GENERAL.** — The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by overseas voters who make timely application for, and do not receive, States, absentee ballots.

(b) **SUBMISSION AND PROCESSING.** — Except as otherwise provided in this title, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an overseas voter shall not be counted. —

(1) if the ballot is submitted from any location in the United States;

(2) if the application of the overseas voter for a State absentee ballot is received by the appropriate State election official less than 30 days before the general election; or

(3) if a State absentee ballot of the overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) **SPECIAL RULES.** — The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) **SECOND BALLOT SUBMISSION; INSTRUCTION TO OVERSEAS VOTER.** — An overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) **USE OF APPROVED STATE ABSENTEE BALLOT IN PLACE OF FEDERAL WRITE-IN ABSENTEE BALLOT.** — The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that —

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) **CERTAIN STATES EXEMPTED.** — A State is not required to permit use of the Federal write-in absentee ballot, if, on and after the date of the enactment of the title, the State has in effect a law providing that —

(1) a State absentee ballot is required to be available to any voter described in section 107(5)(A) at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 107(5)(B) or (C), as soon as the official list of candidates in the general election is complete.

42 USC 1973ff-3.

SEC. 104. RECOMMENDATIONS TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States —

- (1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;
- (2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;
- (3) waive registration requirement for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;
- (4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;
- (5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;
- (6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;
- (7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;
- (8) assist the Presidential designee in compiling statistical and other information relating to this title; and
- (9) provide late registration procedures for persons recently separated from the Armed Forces.

Armed Forces.

Uniformed
services.

Armed Forces.

42 USC 1973ff-4.

SEC. 105. ENFORCEMENT.

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this title.

Taxes.

SEC. 106. EFFECT ON CERTAIN OTHER LAWS.

The exercise of any right under this title shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

42 USC 1973ff-5.

42 USC 1973ff-6.

SEC. 107. DEFINITIONS.

- (1) "absent uniformed services voter" means —

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

- (2) "balloting materials" means official post card forms (prescribed under section 101), Federal write-in absentee ballots (prescribed under section 103), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this title;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways) —

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means —

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Island, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

TITLE II — POSTAL, CRIMINAL, AND GENERAL PROVISIONS

SEC. 201. AMENDMENTS TO TITLE 39, UNITED STATES CODE.

(a) IN GENERAL. — Chapter 34 of title 39, United States Code, is amended by adding at the end of the following new section:

39 USC 3406. "§ 3406. Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act

"(a) Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act (individually or in bulk) —

39 USC 406. "(1) shall be carried expeditiously and free of postage; and

"(2) may be mailed at a post office established outside the United States under section 406 of this title, unless such mailing is prohibited by treaty or other international agreement of the United States.

"(b) As used in this section, the term 'balloting materials' has the meaning given that term in section 107 of the Uniformed and Overseas Citizens Absentee Voting Act."

(b) TECHNICAL AMENDMENTS. —

(1) The table of sections for chapter 34 of title 39, United States Code, is amended by adding at the end the following new item:

“3406. Balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act.”.

(2) The first sentence of section 2401(c) of title 39, United States Code, is amended —

(A) by striking out “3405” and inserting in lieu thereof “3406”; and

(B) by striking out “the Overseas Citizens Voting Rights Act of 1975, and the Federal Voting Assistance Act of 1955”.

(3) Section 3627 of title 39, United States Code, is amended —

(A) by striking out “3405” and inserting in lieu thereof “3406”; and

(B) by striking out “under the Federal Voting Assistance Act of 1955, or under the Overseas Citizens Voting Rights Act of 1975”.

(4) Section 3684 of title 39, United States Code, is amended by striking out, “or of the Federal Voting Assistance Act of 1955”.

Post, p. 930.

Post, p. 930.

Post, p. 930.

Post, p. 930.

SEC. 202. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) IN GENERAL. — Chapter 29 of title 18, United States Code, is amended by adding at the end the following new sections:

“§ 608. Absent uniformed services voters and overseas voters

“(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

“(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

Law enforcement
and crime.

18 USC 608.

18 USC 609.

“§ 609. Use of military authority to influence vote of member of Armed Forces

“Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.”.

Freedom of
speech.

(b) TECHNICAL AMENDMENT. — The table of sections for chapter 29 of title 18, United States Code, is amended by adding at the end the following:

“608. Absent uniformed services voters and overseas voters.

“609. Use of military authority to influence vote of member of Armed Forces.”

SEC. 203. REPEALS.

The Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc et seq.) and the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd et seq.) are repealed.

42 USC 1973ff

note.

SEC. 204. EFFECTIVE DATE.

The amendments and repeals made by this Act shall apply with respect to elections taking place after December 1, 1987.

Approved August 28, 1986.

Syllabus

FRANKLIN, SECRETARY OF COMMERCE, ET AL. v.
MASSACHUSETTS ET AL.APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

No. 91-1502. Argued April 21, 1992—Decided June 26, 1992

The Constitution requires that the apportionment of Representatives be determined by an "actual Enumeration" of persons "in each State," conducted every 10 years. Art. I, §2, cl. 3; Amdt. 14, §2. After the Secretary of Commerce takes the census in a form and content she determines, 13 U.S.C. §141(a), she reports the tabulation to the President, §141(b). He, in turn, sends Congress a statement showing the number of persons in each State, based on data from the "decennial census," and he determines the number of Representatives to which each State will be entitled. 2 U.S.C. §2(a)(6). For only the second time since 1900, the Census Bureau (Bureau) allocated the Department of Defense's overseas employees to particular States for reapportionment purposes in the 1990 census, using an allocation method that it determined most closely resembled "usual residence," its standard measure of state affiliation. Appellees Massachusetts and two of its registered voters filed an action against *inter alia* the President and the Secretary of Commerce, alleging, among other things, that the decision to allocate federal overseas employees is inconsistent with the Administrative Procedure Act (APA) and the Constitution. In particular, they alleged that the allocation of overseas military personnel resulted in the shift of a Representative from Massachusetts to Washington State. The District Court, *inter alia*, held that the Secretary's decision to allocate such employees to the States was arbitrary and capricious under APA standards, directed the Secretary to eliminate them from the apportionment count, and directed the President to recalculate the number of Representatives and submit the new calculation to Congress.

Held: The judgment is reversed.

786 F. Supp. 230, reversed.

JUSTICE O'CONNOR delivered the opinion of the Court with respect to Parts I, II, and IV, concluding that:

1. There was no "final agency action" reviewable under the APA. Pp. 796-801.

(a) An agency action is "final" when an agency completes its decisionmaking process and the result of that process is one that will directly affect the parties. Here, the action that creates an entitlement

Syllabus

to a particular number of Representatives and has a direct effect on the reapportionment is the President's statement to Congress. He is not free to limit the Secretary's report directly to Congress. Rather, he uses the data from the "decennial census" in making his statement and, even after he receives the Secretary's report, he is not prohibited from instructing the Secretary to reform the census. The statutory structure here differs from those statutes under which an agency action automatically triggers a course of action regardless of any "Secretary action" taken by the President. *Japan. Whaling Assn. v. American Cetacean Soc.*, 478 U.S. 221, distinguished. Contrary to appellees' argument, the President's action here is not ceremonial or ministerial. Apportionment is not foreclosed by the time the Secretary gives the President the report, and the fact that the final action is the President's is important to the integrity of the process. Pp. 796-800.

(b) The President's actions are not reviewable under the APA. He is not specifically included in the APA's purview, and respect for the separation of powers and the President's unique constitutional position makes textual silence insufficient to subject him to its provisions. Pp. 800-801.

2. The Secretary's allocation of overseas federal employees to their home States is consistent with the constitutional language and goal of equal representation. It is compatible with the standard of "usual residence," which was the gloss given the constitutional phrase "in each State" by the first enumeration Act and which has been used by the Bureau ever since to allocate persons to their home States. The phrase may mean more than mere physical presence, and has been used to include some element of allegiance or enduring tie to a place. The first enumeration Act also used "usual place of abode," "usual resident," and "inhabitant" to describe the required tie. And "inhabitant" in the related context of congressional residence qualifications, Art. I, §2, has been interpreted to include persons occasionally absent for a considerable time on public or private business. "Usual residence" has continued to hold broad connotations up to the present day. The Secretary's judgment does not hamper the underlying constitutional goal of equal representation, but, assuming that overseas employees have retained ties to their home States, actually promotes equality. Pp. 805-806.

O'CONNOR, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II, in which REHNQUIST, C. J. and WHITE, SCALIA, J., joined. The opinion of the Court with respect to Part IV, in which REHNQUIST, C. J. and WHITE, BLACKMUN, STEVENS, KENNEDY, SOUTER, and THOMAS, JJ. joined, and an opinion with respect to Part III, in which REHNQUIST, C. J., and WHITE,

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and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which BLACKMUN, KENNEDY, and SOUTER, JJ., joined, post, p. 807. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, post, p. 823.

Deputy Solicitor General Roberts argued the cause for appellants. With him on the briefs were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Evelyn S. Kneetler*, *Michael Jay Singer*, and *Mark B. Stern*.

Dwight Golann, *Assistant Attorney General* of Massachusetts, argued the cause for appellees. With him on the briefs were *Scott Harshbarger*, *Attorney General*, *Steve Benson*, *Assistant Attorney General*, and *John P. Driscoll, Jr.*, *Edward P. Leibensperger*, and *Neil P. Motenko*, *Special Assistant Attorneys General*.*

JUSTICE O'CONNOR delivered the opinion of the Court, except as to Part III.

As one season follows another, the decennial census has again generated a number of reapportionment controversies. This decade, as a result of the 1990 census and reapportionment, Massachusetts lost a seat in the House of Representatives. Appellees Massachusetts and two of its registered voters brought this action against the President, the Secretary of Commerce (Secretary), Census Bureau officials, and the Clerk of the House of Representatives, challenging, among other things, the method used for counting federal employees serving overseas. In particular, the appellants' allocation of 922,819 overseas military personnel to the State

**Robert Abrams*, *Attorney General* of New York, *Jerry Boone*, *Solicitor General*, and *Stanford M. Cohen*, *Assistant Attorney General*, *Daniel E. Longren*, *Attorney General* of California, *Thomas D. Barr*, and *Robert S. Rykind* filed a brief for the State of New York et al. as amici curiae urging affirmance.

Kenneth O. Ekenberry, *Attorney General* of Washington, *James M. Johnson*, *Senior Assistant Attorney General*, and *J. Lawrence Coniff* filed a brief for the State of Washington as amici curiae.

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designated in their personnel files as their "home of record" altered the relative state populations enough to shift a Representative from Massachusetts to Washington. A three-judge panel of the United States District Court for the District of Massachusetts held that the decision to allocate military personnel serving overseas to their "homes of record" was arbitrary and capricious under the standards of the Administrative Procedure Act (APA), 5 U.S.C. §701 et seq. As a remedy, the District Court directed the Secretary to eliminate the overseas federal employees from the apportionment counts, directed the President to recalculate the number of Representatives per State and transmit the new calculation to Congress, and directed the Clerk of the House of Representatives to inform the States of the change. The federal officials appealed. We noted probable jurisdiction, stayed the District Court's order, and ordered expedited briefing and argument. 503 U.S. 442 (1992). We now reverse.

I

Article I, §2, cl. 3, of the Constitution provides that Representatives "shall be apportioned among the several States . . . according to their respective Numbers," which requires, by virtue of §2 of the Fourteenth Amendment, "counting the whole number of persons in each State." The number of persons in each State is to be calculated by "actual Enumeration," conducted every 10 years, "in such Manner as [Congress] shall by Law direct." U.S. Const., Art. I, §2, cl. 3.

The delegates to the Constitutional Convention included the periodic census requirement in order to ensure that entrenched interests in Congress did not stall or thwart needed reapportionment. See 1 M. Farrand, *Records of the Federal Convention of 1787*, pp. 571, 578-588 (rev. ed. 1966). Their effort was only partially successful, as the congressional battles over the method for calculating the reapportionment still caused delays. After just such a 10-year stalemate after the 1920 census, Congress reformed the reapportionment proc-

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ess to make it virtually self-executing, so that the number of Representatives per State would be determined by the Secretary of Commerce and the President without any action by Congress. See S. Rep. No. 2, 71st Cong., 1st Sess., 2-3 (1929) ("The need for legislation of this type is confessed by the record of the past nine years during which Congress has refused to translate the 1920 census into a new apportionment. . . . As a result, great American constituencies have been robbed of their rightful share of representation. . . ."); *Department of Commerce v. Montana*, 503 U.S. 442, 461-462, and n. 26 (1992).

Under the automatic reapportionment statute, the Secretary of Commerce takes the census "in such form and content as [she] may determine." 13 U.S.C. §141(a). The Secretary is permitted to delegate her authority for establishing census procedures to the Bureau of the Census. See §§ 2, 4. "The tabulation of total population by States . . . as required for the apportionment of Representatives in Congress . . . shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States." §141(b). After receiving the Secretary's report, the President "shall transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions" 2 U.S.C. §2a(a). "Each State shall be entitled . . . to the number of Representatives shown" in the President's statement, and the Clerk of the House of Representatives must "send to the executive of each State a certificate of the number of Representatives to which such State is entitled." §2a(b).

With the one-time exception in 1900 of counting overseas servicemen at their family home, the Census Bureau did not allocate federal personnel stationed overseas to particular

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States for reapportionment purposes until 1970. App. 175, 177. The 1970 census, taken during the Vietnam War, allocated members of the Armed Forces stationed overseas to their "home of record," using Defense Department personnel records. *Id.*, at 179. "Home of record" is the State declared by the person upon entry into military service, and determines where he or she will be moved after military service is complete. *Id.*, at 149. Because the Bureau found that military personnel were likely to designate a "home of record" with low or no income taxes instead of their true home State—even though home of record does not determine state taxation—the Bureau did not allocate overseas employees to particular States in the 1980 census. App. 180.

Initially, the Bureau took the position that overseas federal employees would not be included in the 1990 state enumerations either. There were, however, stirrings in Congress in favor of including overseas federal employees, especially overseas military, in the state population counts. Several bills requiring the Secretary to include overseas military were introduced but not passed in the 100th and 101st Congresses. See H. R. 3814, 100th Cong., 1st Sess. (1987); H. R. 4294, 100th Cong., 2d Sess. (1988); H. R. 3815, 100th Cong., 1st Sess. (1987); H. R. 4720, 100th Cong., 2d Sess. (1988); S. 2103, 100th Cong., 2d Sess. (1988); H. R. 1468, 101st Cong., 1st Sess. (1989); H. R. 2661, 101st Cong., 1st Sess. (1989); H. R. 3016, 101st Cong., 1st Sess. (1989); S. 290, 101st Cong., 1st Sess. (1989). In July 1989, nine months before the census taking was to begin, then-Secretary of Commerce Robert Mosbacher agreed to allocate overseas federal employees to their home States for purposes of congressional apportionment. App. 182. His decision memorandum cites both the growing congressional support for including overseas employees and the Department of Defense's belief that "its employees should not be excluded from apportionment counts because of temporary and involuntary residence overseas." *Id.*, at 120. Another factor explaining the Secre-

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tary's shift was that the Department of Defense, the largest federal overseas employer, planned to poll its employees to determine, among other things, which State they considered their permanent home. *Id.*, at 184. In December 1989, however, the Defense Department canceled its plans to conduct the survey due to a lack of funds. *Ibid.* As an alternative, the Defense Department suggested that it could provide data on its employees' last six months of residence in the United States, information that would be more complete and up-to-date than the home of record data already in the personnel files. This possibility also failed to materialize when the Defense Department informed the Census Bureau that it was not able to assemble the information after all. *Ibid.*

In the meantime, two more bills were introduced in Congress, but not passed, which would have required the Census Bureau to apportion members of the overseas military to their home States using the "home of record" data already in their personnel files. See H. R. 4903, 101st Cong., 2d Sess. (1990); S. 2875, 101st Cong., 2d Sess. (1990). In July 1990, six months before the census count was due to be reported to the President, the Census Bureau decided to allocate the Department of Defense's overseas employees to the States based on their "home of record." App. 185. It chose the home of record designation over other data available, including legal residence and last duty station, because home of record most closely resembled the Census Bureau's standard measure of state affiliation—"usual residence." 3 Record 925. Legal residence was thought less accurate because the choice of legal residence may have been affected by state taxation. Indeed, the Congressional Research Service found that in 1990 "the nine States with either no income taxes, or those which tax only interest and dividend income, have approximately 9 percent more of the overseas military personnel claiming the States for tax purposes, than those same States receive using *home of record*." Congressional

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Research Service Report, App. 151, n. 13. For similar reasons, last duty station was rejected because it would provide only a work address, and the employee's last home address might have been in a different State, as with those, for example, who worked in the District of Columbia but lived in Virginia or Maryland. 3 Record 925. Residence at a "last duty station" may also have been of a very short duration and may not have reflected the more enduring tie of usual residence. App. 160. Those military personnel for whom home of record information was not available were allocated based on legal residence or last duty station, in that order. *Id.*, at 186.

The Census Bureau invited 40 other federal agencies with overseas employees to submit counts of their employees as well. Of those, only 30 actually submitted counts, and only 20 agencies included dependents in their enumeration. Four of the agencies could not provide a home State for all of their overseas employees. *Ibid.*

Appellees challenged the decision to allocate federal overseas employees, and the method used to do so, as inconsistent with the APA and with the constitutional requirement that the apportionment of Representatives be determined by an "actual Enumeration" of persons "in each State." U. S. Const., Art. I, § 2, cl. 3; U. S. Const., Amdt. 14, § 2. Appellees focused their attack on the Secretary's decision to use "home of record" data for military personnel. The District Court, finding that it had jurisdiction to address the merits of the claims, was "skeptical" of the merits of appellees' constitutional claims, speculating that "[t]here would appear to be nothing inherently unconstitutional in a properly supported decision to include overseas federal employees in apportionment counts." *Commonwealth v. Mosbacher*, 785 F. Supp. 230, 266 (Mass. 1992). The District Court nonetheless held that, on the administrative record before it, the Secretary's decision to allocate the employees and to use home

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of record data was arbitrary and capricious under the standards of the APA. *Id.*, at 264-266.

II

Appellees raise claims under both the APA and the Constitution. We address first the statutory basis for our jurisdiction under the APA. See *Bum v. Bacon*, 457 U.S. 132, 137 (1982); *Burton v. United States*, 196 U.S. 233, 235 (1905).

The APA sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts. The Secretary's report to the President is an unusual candidate for "agency action" within the meaning of the APA, because it is not promulgated to the public in the Federal Register, no official administrative record is generated, and its effect on reapportionment is felt only after the President makes the necessary calculations and reports the result to the Congress. Contrast 2 U.S.C. §441a(e) (requiring Secretary to publish each year in the Federal Register an estimate of the voting age population). Only after the President reports to Congress do the States have an entitlement to a particular number of Representatives. See §2a(b) ("Each State shall be entitled . . . to the number of Representatives shown in the [President's] statement").

The APA provides for judicial review of "final agency action for which there is no other adequate remedy in a court," 5 U.S.C. §704. At issue in this case is whether the "final" action that appellees have challenged is that of an "agency" such that the federal courts may exercise their powers of review under the APA. We hold that the final action complained of is that of the President, and the President is not an agency within the meaning of the Act. Accordingly, there is no final agency action that may be reviewed under the APA standards.

To determine when an agency action is final, we have looked to, among other things, whether its impact "is suffi-

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ciently direct and immediate" and has a "direct effect on . . . day-to-day business." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 152 (1967). An agency action is not final if it is only "the ruling of a subordinate official," or "tentative." *Id.*, at 161. The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties. In this case, the action that creates an entitlement to a particular number of Representatives and has a direct effect on the reapportionment is the President's statement to Congress, not the Secretary's report to the President.

Unlike other statutes that expressly require the President to transmit an agency's report directly to Congress §2a does not. Compare, e.g., 20 U.S.C. §1017(d) ("The President shall transmit each such report [of the National Advisory Council on Continuing Education] to the Congress with his comments and recommendations"); 30 U.S.C. §1315(c) (similar language); 42 U.S.C. §2015(f) (similar language); 42 U.S.C. §6633(b)(2) (similar language). After receiving the Secretary's report, the President is to "transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population." 2 U.S.C. §2a(a). Section 2a does not expressly require the President to use the data in the Secretary's report, but, rather, the data from the "decennial census." There is no statute forbidding amendment of the "decennial census" itself after the Secretary submits the report to the President. For potential litigants, therefore, the "decennial census" still presents a moving target, even after the Secretary reports to the President. In this case, the Department of Commerce, in its press release issued the day the Secretary submitted the report to the President, was explicit that the data presented to the President was still subject to correction. See United States Department of Commerce News, Bureau of Census, 1990 Census Population for the United States is 249,582,692; Reapportionment Will

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Shift 19 Seats in the U. S. House of Representatives 2 (Dec. 26, 1990) ("The population counts set forth herein are subject to possible correction for undercount and overcount. The United States Department of Commerce is considering whether to correct these counts and will publish corrected counts, if any, not later than July 15, 1991").¹ Moreover, there is no statute that rules out an instruction by the President to the Secretary to reform the census, even after the data are submitted to him. It is not until the President submits the information to Congress that the target stops moving, because only then are the States entitled by § 2a to a particular number of Representatives. Because the Secretary's report to the President carries no direct consequences for the reapportionment, it serves more like a tentative recommendation than a final and binding determination. It is, like "the ruling of a subordinate official," *Abbott Laboratories v. Gardner*, *supra*, at 151, not final and therefore not subject to review. Cf. *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103, 109 (1948); *United States v. George S. Bush & Co.*, 310 U.S. 371, 379 (1940).

The statutory structure in this case differs from that at issue in *Japan Whaling Assn. v. American Cetacean Soc.*, 478 U.S. 221 (1986), in which we held that the Secretary of Commerce's certification to the President that another country was endangering fisheries was "final agency action." *Id.*, at 231, n. 4. In that case, the Secretary's certification

¹JUSTICE STEVENS suggests that the "decennial census" is a single count, determined solely by the Secretary, that is used for many purposes other than reapportionment of Representatives. Therefore, he reasons, it cannot be within the control of the President. However, the President may be involved in the policymaking tasks of his Cabinet members, whether or not his involvement is explicitly required by statute. The question here is whether the census count is final before the President acts. It seems clear that it is not. The tabulations used for purposes of state redistricting, which include counts of persons in each state district, are not required by statute to be completed until April 1, months after the President's report to Congress. 13 U.S.C. § 1410c.

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to the President under 22 U.S.C. § 1978(a)(1) automatically triggered sanctions by the Secretary of State under 16 U.S.C. § 1821(e)(2)(B), regardless of any discretionary action the President himself decided to take. *Japan Whaling, supra*, at 226. Under 13 U.S.C. § 141(a), by contrast, the Secretary's report to the President has no direct effect on reapportionment until the President takes affirmative steps to calculate and transmit the reapportionment to Congress.

Appellees claim that because the President exercises no discretion in calculating the numbers of Representatives, his "role in the statutory scheme was intended to have no substantive content," and the final action is the Secretary's, not the President's. Brief for Appellees 86. They cite the Senate Report for the bill that became 2 U.S.C. § 2a, which states that the President is to report "upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer." S. Rep. No. 2, 71st Cong., 1st Sess., at 4-5.

The admittedly ministerial nature of the apportionment calculation itself does not answer the question whether the apportionment is foreordained by the time the Secretary gives her report to the President. To reiterate, § 2a does not curtail the President's authority to direct the Secretary in making policy judgments that result in "the decennial census"; he is not expressly required to adhere to the policy decisions reflected in the Secretary's report. Because it is the President's personal transmittal of the report to Congress that settles the apportionment, until he acts there is no determinate agency action to challenge. The President, not the Secretary, takes the final action that affects the States.

Indeed, it is clear that Congress thought it was important to involve a constitutional officer in the apportionment process. Congress originally considered a bill requiring the Secretary to report the apportionment calculation directly

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to Congress. See S. Rep. No. 1446, 70th Cong., 2d Sess., 4 (1929). The bill was later amended to require the participation of the President: "Another objection to the previous bill was that the Secretary of Commerce should not be entrusted with the final responsibility for making so important a report to Congress. The new and pending bill recognizes this objection to the extent that the President is substituted for the Secretary of Commerce so that this function may be served by a constitutional officer. This makes for greater permanence, which is one of the major virtues to be desired in such a statute." S. Rep. No. 2, *supra*, at 5. It is hard to imagine a purpose for involving the President if he is to be prevented from exercising his accustomed supervisory powers over his executive officers. Certainly no purpose to alter the President's usual superintendent role is evident from the text of the statute.

As enacted, 2 U.S.C. § 2a provides that the Secretary cannot act alone; she must send her results to the President, who makes the calculations and sends the final apportionment to Congress. That the final act is that of the President is important to the integrity of the process and bolsters our conclusion that his duties are not merely ceremonial or ministerial. Thus, we can only review the APA claims here if the President, not the Secretary of Commerce, is an "agency" within the meaning of the Act.

The APA defines "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include— (A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia." 5 U.S.C. §§ 701(b)(1), 551(1). The President is not explicitly excluded from the APA's purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that that textual silence is not enough to subject the Presi-

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dent to the provisions of the APA. We would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion. Cf. *Nixon v. Fitzgerald*, 457 U.S. 731, 748, n. 27 (1982) (Court would require an explicit statement by Congress before assuming Congress had created a damages action against the President). As the APA does not expressly allow review of the President's actions, we must presume that his actions are not subject to its requirements. Although the President's actions may still be reviewed for constitutionality, see *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), we hold that they are not reviewable for abuse of discretion under the APA, see *Armstrong v. Bush*, 298 U.S. App. D.C. 38, 45, 924 F.2d 292, 299 (1991). The District Court erred in proceeding to determine the merits of the APA claims.

III

Although the reapportionment determination is not subject to review under the standards of the APA, that does not dispose of appellees' constitutional claims. See *Webster v. Doe*, 486 U.S. 592, 603–605 (1988). Constitutional challenges to apportionment are justiciable. See *Department of Commerce v. Montana*, 503 U.S. 442 (1992).

We first address standing.² To invoke the constitutional power of the federal courts to adjudicate a case or controversy under Article III, appellees here must allege and prove an injury "fairly traceable to the appellants" allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984).

²While appellants asserted below that the courts have no subject-matter jurisdiction over this case because it involves a "political question," we recently rejected a similar argument in *Department of Commerce v. Montana*, 503 U.S., at 458–459, and appellants now concede the issue. Brief for Appellants 21.

To determine whether appellees sufficiently allege and prove causation requires separating out appellees' claims. Appellees claim both that the Secretary erred in deciding to allocate overseas employees to various States and that the Secretary erred in using inaccurate data to do so. Appellees have shown that Massachusetts would have had an additional Representative if overseas employees had not been allocated at all. App. 183. They have neither alleged nor shown, however, that Massachusetts would have had an additional Representative if the allocation had been done using some other source of "more accurate" data. Consequently, even if appellees have standing to challenge the Secretary's decision to allocate, they do not have standing to challenge the accuracy of the data used in making that allocation. We need, then, review only the decision to include overseas federal employees in the state population counts, not the Secretary's choice of information sources.

The thornier standing question is whether the injury is redressable by the relief sought. Tracking the statutory progress of the census data from the Census Bureau, through the President, and to the States, the District Court entered an injunction against the Secretary of Commerce, the President, and the Clerk of the House. 785 F. Supp. at 268. While injunctive relief against executive officials like the Secretary of Commerce is within the courts' power, see *Youngstown Sheet & Tube Co. v. Sawyer*, *supra*, the District Court's grant of injunctive relief against the President himself is extraordinary, and should have raised judicial eyebrows. We have left open the question whether the President might be subject to a judicial injunction requiring the performance of a purely "ministerial" duty, *Mississippi v. Johnson*, 4 Wall. 475, 493-499 (1867), and we have held that the President may be subject to a subpoena to provide information relevant to an ongoing criminal prosecution, *United States v. Nixon*, 418 U.S. 683 (1974), but in general "this

court has no jurisdiction of a bill to enjoin the President in the performance of his official duties." *Mississippi v. Johnson*, *supra*, at 501. At the threshold, the District Court should have evaluated whether injunctive relief against the President was available, and, if not, whether appellees' injuries were nonetheless redressable.

For purposes of establishing standing, however, we need not decide whether injunctive relief against the President was appropriate, because we conclude that the injury alleged is likely to be redressed by declaratory relief against the Secretary alone. See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 76, n. 20 (1978); *Allen v. Wright*, *supra*, at 732. The Secretary certainly has an interest in defending her policy determinations concerning the census; even though she cannot herself change the reapportionment, she has an interest in litigating its accuracy. And, as the Solicitor General has not contended to the contrary, we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though they would not be directly bound by such a determination.

IV

On the merits, appellees argue that the Secretary's allocation of overseas federal employees to the States violated the command of Article I, §2, cl. 3, that the number of Representatives per State be determined by an "actual Enumeration" of "their respective Numbers," that is, a count of the persons "in" each State. Appellees point out that the first census conducted in 1790 required that persons be allocated to their place of "usual residence." Brief for Appellees 77. See Act of Mar. 1, 1790, §5, 1 Stat. 103. Because the interpretations of the Constitution by the First Congress are per-

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suasive, *Bousher v. Sinor*, 478 U. S. 714, 723-724 (1986), appellees argue that the Secretary should have allocated the overseas employees to their overseas stations, because those were their usual residences.

The appellants respond, on the other hand, that the allocation of employees temporarily stationed overseas to their home States is fully compatible with the standard of "usual residence" used in the early censuses. We review the dispute to the extent of determining whether the Secretary's interpretation is consistent with the constitutional language and the constitutional goal of equal representation. See *Department of Commerce v. Montana*, 503 U. S., at 459.

"Usual residence" was the gloss given the constitutional phrase "in each State" by the first enumeration Act and has been used by the Census Bureau ever since to allocate persons to their home States. App. 173-174. The term can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place. The first enumeration Act itself provided that "every person occasionally absent at the time of the enumeration [shall be counted] as belonging to that place in which he usually resides in the United States." Act of Mar. 1, 1790, § 5, 1 Stat. 103. The Act placed no limit on the duration of the absence, which, considering the modes of transportation available at the time, may have been quite lengthy. For example, during the 36-week enumeration period of the 1790 census, President George Washington spent 16 weeks traveling through the States, 15 weeks at the seat of Government, and only 10 weeks at his home in Mount Vernon. He was, however, counted as a resident of Virginia. T. Clemence, *Place of Abode*, reproduced in App. 83.

The first enumeration Act uses other words as well to describe the required tie to the State: "usual place of abode," "inhabitant," "usual resident[er]." Act of Mar. 1, 1790, § 5, 1 Stat. 103. The first draft of Article I, § 2, also used the word "inhabitant," which was omitted by the Committee of Style

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in the final provision. 2 Farrand, *Records of the Federal Convention of 1787*, at 566, 590.³

In the related context of congressional residence qualifications, U. S. Const., Art. I, § 2, James Madison interpreted the constitutional term "inhabitant" to include "persons absent occasionally for a considerable time on public or private business." 2 Farrand, *Records of the Federal Convention of 1787*, at 217. This understanding was applied in 1824, when a question was raised about the residency qualifications of would-be Representative John Forsyth, of Georgia. Mr. Forsyth had been living in Spain during his election, serving as minister plenipotentiary from the United States. His qualification for office was challenged on the ground that he was not "an inhabitant of the State in which he [was] chosen." U. S. Const., Art. I, § 2, cl. 2. The House Committee of Elections disagreed, reporting: "There is nothing in Mr. Forsyth's case which disqualifies him from holding a seat in this House. The capacity in which he acted, excludes the idea that, by the performance of his duty abroad, he ceased to be an inhabitant of the United States; and, if so, inasmuch as he had no inhabitancy in any other part of the Union than Georgia, he must be considered as in the same situation as before the acceptance of the appointment." M. Clarke & D. Hall, *Cases of Contested Elections in Congress 497-498* (1834). Representative Bailey, supporting the qualification of Mr. Forsyth, pointed out that if "the mere living in a place constituted inhabitancy," it would "exclude sitting members of this House." *Id.*, at 497 (emphasis deleted).

Up to the present day, "usual residence" has continued to hold broad connotations. For example, up until 1950, college

³ As submitted to the Committee of Style, the provision read: "[T]he Legislature shall . . . regulate the number of representatives by the number of inhabitants." 2 M. Farrand, *Records of the Federal Convention of 1787*, p. 566 (rev. ed. 1966). After its return by the Committee, it had a more familiar ring: "Representatives . . . shall be apportioned among the several states . . . according to their respective numbers." *Id.*, at 650.

students were counted as belonging to the State where their parents resided, not to the State where they attended school. App. 219. Even today, high school students away at boarding school are allocated to their parents' home State, not the location of the school. *Id.*, at 220. Members of Congress may choose whether to be counted in the Washington, D. C. area or in their home States. *Id.*, at 218. Those persons who are institutionalized in out-of-state hospitals or jails for short terms are also counted in their home States. *Id.*, at 225.

In this case, the Secretary of Commerce made a judgment, consonant with, though not dictated by, the text and history of the Constitution, that many federal employees temporarily stationed overseas had retained their ties to the States and could and should be counted toward their States' representation in Congress: "Many, if not most, of these military overseas consider themselves to be usual residents of the United States; even though they are temporarily assigned overseas." *Id.*, at 120. The Secretary's judgment does not hamper the underlying constitutional goal of equal representation, but, assuming that employees temporarily stationed abroad have indeed retained their ties to their home States, actually promotes equality. If some persons sharing in Washington's fate had not been properly counted, the votes of all those who reside in Washington State would not have been weighted equally to votes of those who reside in other States. Certainly, appellees have not demonstrated that eliminating overseas employees entirely from the state counts will make representation in Congress more equal. Cf. *Karcher v. Daggett*, 462 U.S. 725, 730-731 (1983) (parties challenging state apportionment legislation bear burden of proving disparate representation). We conclude that appellees' constitutional challenge fails on the merits.

The District Court's judgment is

Reversed.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN, JUSTICE KENNEDY, and JUSTICE SOUTER join, concurring in part and concurring in the judgment.

In my opinion the census report prepared by the Secretary of Commerce is "final agency action" subject to judicial review under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.* I am persuaded, however, that the Secretary complied with the Census Act and with the Constitution in the preparation of the 1990 census and that, under the standard of deference appropriate here, the Secretary's actions were not arbitrary or capricious. I therefore agree that the judgment of the District Court must be reversed.

I

During the decade after 1980 the population of Massachusetts increased less rapidly than the population of the entire Nation. In the apportionment following the 1990 census, it received only 10 of the 435 seats in the House of Representatives whereas formerly it had 11.

In the District Court, appellees, who are the Commonwealth of Massachusetts and two of its registered voters, made two separate attacks on the process that reduced the size of Massachusetts' congressional delegation. They challenged the Secretary's conduct of the census, and they challenged the method of apportioning congressional seats based on the census report. The District Court rejected the challenge to the constitutionality of the method of apportionment prescribed in the Apportionment Act of 1941, 55 Stat. 761-762. *Commonwealth v. Mosbacher*, 785 F. Supp. 230, 256 (Mass. 1992). That decision was consistent with the analysis subsequently set forth in our opinion in *Department of Commerce v. Montana*, 503 U.S. 442 (1992), and is no longer in dispute. Pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706(2), the District Court also examined the decision of the Secretary of Commerce to include overseas federal employees in the census count. The

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court concluded that the Secretary's decision was "arbitrary and capricious, and an abuse of discretion." 786 F. Supp. at 267.

In a rather surprising development, this Court reverses because it concludes that the census report is not "final agency action," 5 U.S.C. §704. The reason the Court gives for this conclusion is that the President—who is not himself a part of the agency that prepared the census and who has no statutory responsibilities under the Census Act—might revise that report in some way when he is performing his responsibilities under an entirely separate statute, the Apportionment Act. The logic of the Court's opinion escapes me, and apparently was not obvious to the Solicitor General, for he advanced no such novel claim in his argument seeking reversal. The Court's conclusion is erroneous for several reasons.

II

Article I, §2, cl. 3, of the Constitution, as modified by the Fourteenth Amendment, provides that Members of the House of Representatives "shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State" To ensure that the apportionment remains representative of the current population, the Constitution further requires that a census be taken at least every 10 years.¹

Beginning in 1790, Congress fulfilled the constitutional command by passing a Census Act every 10 years. Under the early census statutes, marshals would transmit the collected information to the Secretary of State. The census functions of the Secretary of State were transferred to the Secretary of the Interior after that Department was estab-

¹"The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct." U.S. Const., Art. I, §2, cl. 3.

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lished in 1849.² A Census Office in the Department of the Interior was established in 1899 and made permanent in 1902.³ A year later, the Census Office was moved to the newly formed Department of Commerce and Labor.⁴

Following each census, Congress enacted a statute to reapportion the House of Representatives. After the 1920 census, however, Congress failed to pass a reapportionment Act. This congressional deadlock provided the impetus for the 1929 Act that established a self-executing apportionment in the case of congressional inaction. See S. Rep. No. 2, 71st Cong., 1st Sess., 2-4 (1929). The bill produced an automatic reapportionment through the application of a mathematical formula to the census. The automatic connection between the census and the reapportionment was the key innovation of the Act.⁵

In its original version, the bill directed the Secretary of Commerce to apply a mathematical formula to the census figures and to transmit the resulting apportionment calculations to Congress. A later version made the President responsible for performing the mathematical computations and reporting the result. From the legislative history, it is clear that this change in the designated official was intended to have no substantive significance.⁶ There is no indication

²See C. Wright, *The History and Growth of the United States Census*, S. Doc. No. 194, 56th Cong., 1st Sess., 40 (1900).

³32 Stat. 51.

⁴32 Stat. 826-827.

⁵See 71 Cong. Rec. 1609-1610 (1929) (remarks of Sen. Vandenberg). The automatic reapportionment on the basis of the decennial census was retained when the reapportionment features of the bill were modified somewhat in 1941. Act of Nov. 16, 1941, 55 Stat. 761. See *Department of Commerce v. Montana*, 503 U.S. 442, 461-462, and n. 25 (1992).

⁶The sponsor of the bill, Senator Vandenberg, explained the change: "The President of the United States is substituted in the bill as the person who shall make the computation and report instead of the Secretary of Commerce, who was identified in the bill last February simply and solely because it was my own personal notion that if we were to accomplish a permanent end through the passage of permanent legislation it were

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whatsoever of an intention to introduce a layer of Executive discretion between the taking of the census and the application of the reapportionment formula. The intention was exactly the contrary: to make the apportionment proceed automatically based on the census.

The statutory scheme creates an interlocking set of responsibilities for the Secretary and the President. The Secretary of Commerce is required to take a "decennial census of population as of the first day of April of [every tenth] year, which date shall be known as the 'decennial census date.'" 13 U.S.C. § 141(a). The Secretary reports the collected information to the President, see § 141(b), who is directed to "transmit to the Congress" a statement showing the population of each State "as ascertained under the seventeenth and each subsequent decennial census" 2 U.S.C. § 2a(a). The plain language of the statute demonstrates that the President has no substantive role in the computation of the census. The Secretary takes the "decennial census," and the President performs the apportionment calculations and transmits the census figures and apportionment results to Congress.

In the face of this clear statutory mandate, the Court must fall back on an argument based on statutory silence. The Court insists that there is no law *prohibiting* the President from changing the census figures after he receives them from the Secretary. The Court asserts: "Section 2a does not expressly require the President to use the data in the *Secretary's report*; but, rather, the data from the '*decennial census*.'" *Ante*, at 797 (emphasis added). This statement is difficult to comprehend, for it purports to contrast two terms that the statute equates. The "decennial census" is the name the statute gives to the information collected by the

better to name a constitutional officer rather than a statutory officer. I have quite no pride of opinion at that point and I think it makes quite no difference, because everybody will get the same answer when we undertake to do that problem in arithmetic." 71 Cong. Rec. 1613 (1929).

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Secretary and reported to the President. The Court's argument cannot be harmonized with a statutory scheme that directs the Secretary to take the "decennial census" and the President to report to Congress figures "as ascertained under the . . . decennial census." This language cannot support the Court's view that the statute endows the President with discretion to modify the census results reported by the Secretary.

The legislative record, moreover, establishes that the Executive involvement in the process is to be wholly ministerial.⁷ The question of the discretion allowed to the President was discussed on the floor of the Senate, and the sponsor of the bill, Senator Vandenberg of Michigan, stated unequivocally that the President exercised no discretion whatsoever: "I believe as a matter of indisputable fact, that function served by the President is as purely and completely a ministerial function as any function on earth could be." 71 Cong. Rec. 1858 (1929).⁸ In a colloquy with other legisla-

⁷The Senate Report, for example, states:

"The objection that this is an improper 'delegation of power' to the Department of Commerce (which takes the census) and to the President (who reports the arithmetic) is answered by an examination of the facts. No power whatever is delegated. The Department of Commerce counts the people (as it always has done) and the President reports upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer." S. Rep. No. 2, 71st Cong., 1st Sess., 4-5 (1929).

⁸At another point Senator Vandenberg explained:

"The bill calls upon the President to report the result of a census to the Congress. We have always depended upon somebody to report the result of a census to us. The bill calls upon the President, when he reports the result of the census, also to report the result of a problem in arithmetic. If the President did not present the answer to that problem in arithmetic, somebody else would have to do the problem in arithmetic, because no matter what method is embraced for purposes of apportionment, there is inevitably needed a formula which, like a chemical formula, may in itself be somewhat inscrutable, and yet which always reaches the same conclusion." 71 Cong. Rec. 1613 (1929). The accuracy of Senator Vandenberg's

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tors, Senator Vandenberg made clear that the bill did not allow the President to change the census figures he received:

"Mr. SWANSON: As I understand, the Senator from Montana says, after reading the bill carefully, that the President is bound and has no discretion under its terms; so that if there should be glaring frauds all over the country he would be compelled to make the apportionment according to the census.

"Mr. WALSH of Montana: I should say so, because as I understand, he is not authorized to disregard any numbers upon any ground.

"Mr. SWANSON: I should like to ask the Senator from Michigan if that is his view? I understand the Senator from Montana to say that if the census returns shall be shown to be reeking with frauds the President will have no power to correct them; that he must follow the census returns as certified, regardless of the fraud that may be involved. Is that the view of the Senator from Michigan?

"Mr. VANDENBERG: My answer is that the Senator from Montana is entirely correct. There is absolutely no discretion in name or nature reposed in the President in connection with the administration of this proposed act." *Id.*, at 1845-1846.⁸

No President—indeed, no member of the Executive Branch—has ever suggested that the statute authorizes the President to modify the census figures when he performs the

statements is confirmed by the analysis set forth in our opinion in *Department of Commerce v. Montana*, 603 U.S., at 448-456.

⁸ An opponent of the bill, Senator Black, questioned whether the Act might allow the President more than a ministerial role in the apportionment process. He considered such a possibility a recipe for tyranny. See 71 Cong. Rec. 1612 (1929).

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apportionment calculations. Nor did the Solicitor General advance that argument in this litigation.¹⁰ As a matter of practice, the President has consistently and faithfully performed the ministerial duty described by Senator Vandenberg. The Court's suggestion today that the statute gives him discretion to do otherwise is plainly incorrect.¹¹

¹⁰ While asserting that the President has authority to direct the Secretary's performance of the census, the Solicitor General acknowledged that the statute does not authorize the President to deviate from the Secretary's report:

"MR. ROBERTS: The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives, but I don't think there is a limit on his exercise of authority to direct the Secretary of Commerce to conduct the census in a particular manner. It would be unlawful, maybe not subject to judicial review, but unlawful just to say, these are the figures, they are right, but I am going to submit a different statement. But he can certainly direct the Secretary in the conduct of the census.

"QUESTION: But would he have to remand it in effect to the Secretary or could he say, well, I have had somebody over at the FBI making some checks for me and they tell me there are really more people in Massachusetts, so I am going to give them extra seats.

"MR. ROBERTS: I think under the law he is supposed to base his calculation on the figures submitted by the Secretary." *Tr.*, of Oral Arg. 12-13.

¹¹ The Court defines the two duties of the President: (1) the general duty to supervise the actions of the Secretary of Commerce and (2) the statutory duty to transmit the census report and the apportionment calculations to Congress. This confusion is evident from the Court's statement, "It is hard to imagine a purpose for involving the President if he is to be prevented from exercising his accustomed supervisory powers over his executive officers." *Id.*, at 800. It may be true that the statute does not purport to limit the President's "accustomed supervisory powers" over the Secretary of Commerce. The President would enjoy these "accustomed powers," however, whether or not he was responsible for transmitting the census and apportionment calculations to Congress. There "accustomed powers," therefore, cannot be relevant in deciding whether agency action is final for the purposes of the APA, or else no action of an Executive department would ever be final. The Court's argument then depends on construing the statute to grant discretion to the President that

Because the Census Act directs that the tabulation of the total population by States shall be "reported by the Secretary to the President," the Court suggests that it is "like a tentative recommendation" to the President, *ante*, at 798. This suggestion is misleading because, unlike the typical "tentative recommendation," the census report is a public document. It is released to the public at the same time that it is transmitted to the President.¹² By law, the census report is distributed to federal and state agencies because it provides the basis for the allocation of various benefits and burdens among the States under a variety of federal programs. The Secretary also transmits the census figures directly to the States to assist them in redistricting. See 13 U.S.C. § 141(c).

This wide distribution provides further evidence that the statute does not contemplate the President's changing the Secretary's report. If the President modified the census figures after he received them from the Secretary, the Federal Government and the States would rely on different census results. The Secretary has made clear that the existence of varying "official" population figures is not acceptable.

he would not otherwise enjoy. Such additional grants of authority were implicated in the cases on which the Court relies. See *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103 (1948); *United States v. George S. Bush & Co.*, 310 U.S. 371 (1940). The statutory language here will not bear this interpretation. Moreover, whatever purpose the Court wishes to "imagine" for the statute's designating the President as the official responsible for performing the apportionment calculations, the legislative record makes it absolutely clear that the purpose was not to give the President any new discretionary authority over the census. See *supra*, at 810-812, and n. 6.

¹²See United States Department of Commerce News, Bureau of Census, 1980 Census Population for the United States is 249,632,692; Reapportionment Will Shift 19 Seats in the U. S. House of Representatives (Dec. 26, 1990); see also N. Y. Times, Dec. 27, 1990, p. A1, col. 3.

In setting forth guidelines for possible adjustment of the census results,¹³ the Secretary stated:

"The resulting counts must be of sufficient quality and level of detail to be usable for Congressional reapportionment and legislative redistricting, and for all other purposes and at all levels for which census counts are published. . . .

"[T]here can be, for the population at all geographic levels at any one point in time, only one set of official government population figures." 56 Fed. Reg. 9840-9941 (1990).

To ensure uniformity, the Secretary's count must establish the final census figures.¹⁴

¹³The Court asserts that the possibility of census adjustments prior to the President's report to Congress supports its interpretation of the statute. See *ante*, at 797-798. On the contrary, the evidence the Court cites undermines its argument. The President's statement accompanying the transmission of the 1980 census and appended figures to Congress explains, "The Department of Commerce is considering whether to correct the figures. . . . We will publish corrected counts, if any, not later than July 15, 1991." H. R. Doc. No. 102-18, p. 1 (1991). The statement underscores that it is the Secretary, not the President, who determines the final census figures. That the Secretary will "publish" the corrected results also demonstrates that the Court is mistaken in likening the Secretary's report to a "tentative recommendation." *Ante*, at 798.

The possibility that the Secretary may modify the census figures, of course, cannot support the Court's view that the President's intervention deprives the Secretary's action of finality. The possibility of correction would mean, at most, that appellees' challenge was not ripe until the Secretary's eventual announcement that he would not adjust the census. See 56 Fed. Reg. 33652 (1991). Similarly, even if it were the President's report to Congress that signaled the end of a census-adjustment process, that would be relevant only in determining when a challenge is ripe, not whether the Secretary's report is a "final agency action."

¹⁴Even in the Court's view, the Secretary's report of census information to recipients other than the President would certainly constitute "final agency action." The Court's decision thus appears to amount to a pleading requirement. To avoid the bar to APA review that the Court imposes

In light of the statutory language, the legislative history, and the consistent Executive practice, the Court's conclusion that the census report is not "final agency action" is as insupportable as it is surprising.¹⁵

III

In view of my conclusion that the census report prepared by the Secretary constitutes final agency action, I must consider the Secretary's contention that judicial review is not available because the conduct of the census is "committed to agency discretion by law," 5 U.S.C. § 701(a)(2).

As we have frequently recognized, the "strong presumption that Congress intends judicial review of administrative action," see, e.g., *Bouven v. Michigan Academy of Family Physicians*, 476 U.S. 687, 670 (1986), cannot be overcome without "clear and convincing evidence" of a contrary legislative intent, *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967) (quoting *Rusk v. Cort*, 369 U.S. 367, 380 (1962)). No such evidence appears here.

The current version of the statute provides that "[t]he Secretary shall . . . take a decennial census of population as of the first day of April . . . in such form and content as [she] may determine" 13 U.S.C. § 141(a).¹⁶ The Secretary

today, litigants need only join their apportionment challenges to other census-related claims. Notwithstanding the Court's novel reading of the statute, in view of the Secretary's insistence on unitary census data, relief on any census claim would yield relief on all other claims.

"My conclusion that the Secretary's action was reviewable makes it unnecessary for me to consider whether the President is an 'agency' within the meaning of the APA.

"Moreover, this language appeared only recently in the statute. The Act passed in 1929 stated: 'That a census of population . . . shall be taken by the Director of the Census in the year 1930 and every ten years thereafter.' 46 Stat. 21. Before the 1976 amendment, the Act provided: 'The Secretary shall, in the year 1960 and every ten years thereafter, take a census of population' 71 Stat. 483. It was not until 1976 that Congress added the language, 'in such form and content as [she] may determine.' To the extent that the argument for unreviewability depends on

asserts that the discretion afforded by the statute is at least as broad as that allowed the Director of Central Intelligence in the statute we considered in *Weber v. Doe*, 486 U.S. 592 (1988). That assertion cannot withstand scrutiny. The statute at issue in *Doe* provided that "the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States . . ." 50 U.S.C. § 403(c). In concluding that employment discharge decisions were committed to agency discretion, we emphasized the language of "deem . . . advisable," which we found to provide no meaningful standard of review. We also relied on the overall statutory structure of the National Security Act.

No language equivalent to "deem . . . advisable" exists in the census statute. There is no indication that Congress intended the Secretary's own mental processes, rather than other more objective factors, to provide the standard for gauging the Secretary's exercise of discretion. Moreover, it

this phrase, it requires the conclusion that when Congress amended the statute in 1976, it intended to effect a new, unreviewable commitment to agency discretion. There is no support for this position whatsoever. The main purpose of the 1976 amendment was to provide for a mid-decade census to be used for various purposes (not including apportionment). See S. Rep. No. 94-1256, pp. 2-3 (1976). The legislative history evidences no intention to expand the scope of the Secretary's discretion.

The Senate Report on the new language in 13 U.S.C. § 141(a) reads in its entirety:

"Subsection (a) of section 141 essentially rewords the existing subsection, adding the term 'decennial census of population' so as to distinguish this census to be taken in 1980 and every ten years thereafter, from the mid-decade census, which is to be taken in 1986 and every ten years thereafter. New language is added at the end of the subsection to encourage the use of sampling and surveys in the taking of the decennial census." S. Rep. No. 94-1256, at 4.

Indeed, other portions of the Act limited the Secretary's authority by requiring, if feasible, the use of sampling in the nonapportionment census. 90 Stat. 2464, 13 U.S.C. § 195.

is difficult to imagine two statutory schemes more dissimilar than the National Security Act and the Census Act. Though they both relate to the gathering of information, the similarity ends there. *Doe* raises the possibility that, except for constitutional claims, the Director of Central Intelligence may enjoy unreviewable discretion to discharge employees. This conclusion accords with the principle of judicial deference that pervades the area of national security. See, e.g., *Department of Navy v. Egan*, 484 U.S. 518, 530 (1988); *CIA v. Sims*, 471 U.S. 159, 180-181 (1985). While the operations of a secret intelligence agency may provide an exception to the norm of reviewability,¹⁷ the taking of the census does not. The open nature of the census enterprise and the public dissemination of the information collected are closely connected with our commitment to a democratic form of government.¹⁸ The reviewability of decisions relating to the conduct of the census bolsters public confidence in the integrity of the process and helps strengthen this mainstay of our democracy.

More generally, the Court has limited the exception to judicial review provided by 5 U.S.C. § 701(a)(2) to cases involving national security, such as *Webster v. Doe* and *Department of Navy v. Egan*, or those seeking review of refusal to pursue enforcement actions, see *Heckler v. Chaney*, 470 U.S.

¹⁷ Indeed, it was asserted in *Webster v. Doe*, 466 U.S. 592 (1988), that the statute should be construed to preclude review even of constitutional claims. See *id.* at 605-606 (O'CONNOR, J., concurring in part and dissenting in part); *id.* at 621 (SCALIA, J., dissenting) (describing Court's refusal to preclude constitutional review as creating "the world's only secret intelligence agency that must litigate the dismissal of its agents").

¹⁸ See 3 Encyclopedia of the Social Sciences 296 (reprinted in Subcommittee on Energy, Nuclear Proliferation and Federal Services of the Senate Committee on Governmental Affairs, *The Decennial Census: An Analysis and Review*, 96th Cong., 2d Sess., 461 (Comm. Print 1980)). The tradition of publicity, of course, relates to the tabulated information. The confidentiality of individual responses has long been assured by statute. See 13 U.S.C. § 14(b), 90a; see also *Buldrige v. Shapiro*, 465 U.S. 345, 356-358 (1982).

821 (1986); *Southern R. Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444 (1979); *Morris v. Gressette*, 492 U.S. 491 (1977). These are areas in which courts have long been hesitant to intrude. The taking of the census is not such an area of traditional deference.¹⁹

Nor is this an instance in which the statute is so broadly drawn that "there is no law to apply."²⁰ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (quoting S. Rep. No. 752, 79th Cong., 1st Sess., 26 (1945)). The District Court found that the overall statutory scheme and the Census Bureau's consistently followed policy provided "law to apply" in reviewing the Secretary's exercise of discretion. 785 F. Supp., at 282. As the District Court explained, the relationship of the census provision contained in 13 U.S.C. § 141 and the appointment provision contained in 2 U.S.C. § 2a demonstrates that the Secretary's discretion is constrained by the requirement that she produce a tabulation of the "whole number of persons in each State." 2 U.S.C. § 24(a).²⁰ This statutory command also

¹⁹ The great weight of authority supports the view that the conduct of the census is not "committed to agency discretion by law." See, e.g., *Carey v. Klutznick*, 637 F.2d 834 (CA2 1980); *New York v. United States Dept. of Commerce*, 793 F. Supp. 761 (EDNY 1990); *New York v. United States Dept. of Commerce*, 713 F. Supp. 48 (EDNY 1990); *Cuomo v. Buldrige*, 674 F. Supp. 1069 (SDNY 1997); *Willamson v. Buldrige*, 556 F. Supp. 561 (SD Ga. 1983); *Carey v. Klutznick*, 508 F. Supp. 404 (SDNY 1980); *Philadelphia v. Klutznick*, 503 F. Supp. 683 (ED Pa. 1980); *Young v. Klutznick*, 497 F. Supp. 1318 (2d Mich. 1980), *rev'd on other grounds*, 663 F.2d 617 (CA6 1981), *cert. denied sub nom. Young v. Buldrige*, 455 U.S. 939 (1982); *Cumden v. Platten*, 469 F. Supp. 44 (N.J. 1978).

²⁰ The Census Act provides various other rules, as well, that limit the Secretary's discretion. For example, the statute requires the Secretary to take a decennial census of population "as of the first day of April" in every 10th year. 13 U.S.C. § 141(a). Thus, persons who die in February or March, or who are not born until May or June, are not to be counted. The fact that the statute gives the Secretary broad discretion with respect to the "form and content" of the census surely does not mean that she could lawfully count persons who predeceased the census date or who were

embodies a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment. The "usual residence" policy that has guided the census since 1790 provides a further standard by which to evaluate the Secretary's exercise of discretion. See generally *Heckler v. Chaney*, 470 U.S., at 896; *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 468 U.S. 29, 41-43 (1983); *Padilla v. Webster*, 822 F.2d 97, 100, 261 U.S. App. D. C. 385, 388 (1987). The District Court was clearly correct in concluding that the statutory framework and the long-held administrative tradition provide a judicially administrable standard of review.²¹

IV

For the reasons stated in Part IV of the Court's opinion, I agree that the inclusion of overseas employees in state census totals does not violate the Constitution.²² I turn now to

born thereafter. Similarly, it would be plain error to count as Massachusetts residents a family that moved from New York to Boston on June 1, 1980, and then returned to New York on June 2, 1980. The Secretary's scheme supports the Secretary's alternative argument that this is a U.S.C. § 1701(a)(1). In the absence of express statutory language, we have generally reserved that exception for cases in which the existence of an alternative review procedure provided "clear and convincing evidence." *Benson v. Michigan Academy of Family Physicians*, 476 U.S. 657, 671 (1986). (Citations and internal quotation marks omitted). of a legislative intent to preclude judicial review. See, e.g., *Department of Navy v. Egan*, 484 U.S. 518, 530-533 (1988); *NLRB v. Bechtold & Co.*, 487 U.S. 112, 130-133 (1987); *Block v. Community Nutrition Institute*, 467 U.S. 340, 346-348 (1984). No such alternative case exists here. The ability of Congress, itself, to resolve apportionment issues by enacting new laws does not provide any evidence of an intent to preclude judicial review.

²¹ I believe that appellee's challenge to the use of "home of record" data also merits brief consideration. The contention that overseas personnel may have little connection with their "home of record" clearly has some force. A person designates a

appellees' contention that the Secretary's decision to include overseas federal employees was arbitrary and capricious and should have been set aside under the APA.

With the exception of the census conducted in 1900, overseas federal employees were not included in state census totals before 1970.²³ In the census conducted in 1970, during the Vietnam War, overseas military personnel were assigned to States for apportionment purposes based on the "home of record" appearing in their personnel files.²⁴ The Bureau reverted to its previous policy of excluding overseas employees from apportionment totals in the 1980 census. In explaining this decision, one of the reasons cited by Bureau officials was the "unknown reliability" of the data relied on to determine the "home State" of overseas personnel. App. 85. In discussions with the Bureau and in testimony before Congress, officials of the Defense Department agreed that "home of record" data had a high "error rate" and might have little correlation with an employee's true feelings of affiliation. See *id.*, at 124, 183.

In July 1989, then-Secretary Mosbacher decided to include overseas employees in state population figures in the 1990

"home of record" when entering the service and is not permitted to change it thereafter. See App. 147, n. 5. This information may therefore be quite stale, implicating the constitutional requirements of accuracy and decenniality.

The special problems of including overseas personnel in the census, though, necessitate difficult judgments about the best data to use. In view of the discretion available to the Secretary in formulating residence rules, the adoption of the "home of record" principle cannot be said to change any constitutional command. Accuracy in the census is a clear constitutional imperative, and a policy of excluding overseas personnel has the constitutional requirement of accuracy dictates a different method of determining residence.

Like the District Court, I also conclude that the Secretary's decision did not violate any specific provision of the Census Act. See 785 F. Supp. at 266, n. 31.

²³ See App. 176-177.

²⁴ See *id.*, at 67.

census.²⁵ The decision memorandum approved by the Secretary described several reasons for this conclusion, including "growing bipartisan concern of the Congress" and the belief of the Defense Department that its employees should be included in apportionment calculations because they considered themselves to be "usual residents" of the United States. *Id.*, at 120. The prospect of more accurate data than previously available also contributed to the decision. The memorandum stated that the Defense Department's plans to conduct an enumeration of its employees provided a "significant reason" for the decision. *Id.*, at 121; see also *id.* at 184. In December 1989, however, a lack of funds led the Defense Department to cancel the survey. *Id.* The Secretary nevertheless adhered to the decision to include overseas personnel.

In reaching the ultimate decision to allocate overseas federal employees to States, the Secretary had an obligation to "examine the relevant data and articulate a satisfactory explanation for [the] action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S., at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 166, 168 (1962)). The District Court was properly concerned by the scant evidence that the Secretary reconsidered the apportionment policy following the cancellation of the Defense Department survey. If the justification for the decision no longer obtained, the refusal to reconsider would be quite capricious. The District Court was certainly correct in concluding that "[i]nertia cannot supply the necessary rationality" for the Secretary's decision. 785 F. Supp., at 266.

While the question is a close one, two factors in particular lead me to conclude that the decision to include overseas employees ultimately rested on more than inertia. First, the Secretary received assurances from the Defense Department

²⁵ *Id.*, at 182.

that, even without the survey, information on overseas personnel would be "supplemented and improved," App. 161, and would thus be more accurate than the data available in the past. Moreover, while the anticipated Defense Department survey played an important role in the Secretary's initial decision, other factors cited in the memorandum continued to support the Secretary's choice to include overseas personnel.

The record could be more robust. However, the basis for the agency's decision need not appear with "ideal clarity," *Boysen Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 286 (1974), as long as it is reasonably discernible. As the Court explains, see *ante*, Part IV, the Secretary had discretion to include overseas personnel in the census count. Although the hopes for more accurate data were not fully realized, the record discloses that the decision to include overseas personnel continued to be supported by valid considerations. I therefore conclude that the decision of the Secretary was not arbitrary or capricious.²⁶

For these reasons, I concur in the Court's judgment, but only in Part IV of its opinion.

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I agree with the Court that appellees had no cause of action under the judicial-review provisions of the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and I therefore join Parts I and II of its opinion.

Appellees have also challenged the constitutionality of the allocation methods used by the Secretary of Commerce in conducting the census. The Court concludes that they have

²⁶ The record indicates that the Secretary considered the alternative methods of allocating overseas employees to States and that the choice of "home of record" data was certainly not arbitrary or capricious. See, e.g., App. 182.

standing to assert these claims, but that the claims are meritless.¹ I disagree with the Court's conclusion on the standing question, and therefore do not reach the merits. Our cases have established that there are three elements to the "irreducible constitutional minimum of standing" required by Article III: (1) the plaintiffs must establish that they have suffered "injury in fact"; (2) they must show causation between the challenged action and the injury; and (3) they must establish that it is likely that the injury will be redressed by a decision in their favor. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Appellees have clearly satisfied the first two requirements, but I think they founder on the third.

The plurality concludes that declaratory relief directed at the Secretary alone would be sufficient to redress appellees' injury. *Ante*, at 808. I do not agree. Ordering the Secretary to recalculate the final census totals will not redress appellees' injury unless the President accepts the new numbers, changes his calculations accordingly, and issues a new reapportionment statement to Congress, and the Clerk of the House then submits new certificates to the States. 13 U.S.C. § 141(b); 2 U.S.C. § 2a. I agree that, in light of the Clerk's purely ministerial role, we can properly assume that insofar as his participation is concerned the sequence of events will occur. But as the Court correctly notes, *ante*, at 797-800, the President's role in the reapportionment process is not purely ministerial; he is not "required to adhere to the policy decisions reflected in the Secretary's report," *ante*, at 799. I do not think that for purposes of the Article III redressability requirement we are ever entitled to assume, no matter how objectively reasonable the assumption may be, that the President (or for that matter, any official of the Ex-

¹ Although only a plurality of the Court joins that portion of Justice O'Connor's opinion which finds standing (Part III), I must conclude that the Court finds standing since eight Justices join Part IV of the Court's opinion discussing the merits of appellees' constitutional claims.

ecutive or Legislative Branches), in performing a function that is not wholly ministerial, will follow the advice of a subordinate official. The decision is by Constitution or law conferred upon him, and I think we are precluded from saying that it is, in practical effect, the decision of someone else. Indeed, judicial inquiry into or speculation about the probability of such "practical" subservience—never mind acting upon the outcome of such inquiry or speculation—seems to me disrespectful of a coordinate branch. On such a theory of redressability, suit would lie (assuming injury-in-fact could be shown) against the members of the President's Cabinet, or even the members of his personal staff, for the almost-sure-to-be-followed advice they give him in their respective areas of expertise.

The plurality, however, has a different theory of redressability. In its view, it suffices that the "authoritative interpretation of the census statute and constitutional provision" rendered by the District Court will induce the President to submit a new reapportionment that is consistent with what the District Court judgment orders the Secretary to submit. *Ante*, at 808. It seems to me this bootstrap argument eliminates, rather than resolves, the redressability question. If courts may simply assume that everyone (including those who are not proper parties to an action) will honor the legal rationales that underlie their decrees, then redressability will always exist. Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power. It is the Court's *judgment*, in other words, its injunction to the Secretary of Commerce, that must provide appellees relief—not its accompanying excursus on the meaning of the Constitution.

Though the Court does not rely upon it, the judgment sought here *did* run against the President of the United States. The District Court's order expressly required, not

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only that a new census tabulation be prepared, but also that the President issue a new certification and that the Clerk of the House forward the new apportionment to the 50 Governors. It is a commentary upon the level to which judicial understanding—indeed, even judicial awareness—of the doctrine of separation of powers has fallen, that the District Court entered this order against the President without blinking an eye. I think it clear that no court has authority to direct the President to take an official act.

We have long recognized that the scope of Presidential immunity from judicial process differs significantly from that of Cabinet or inferior officers. Compare *Nixon v. Fitzgerald*, 457 U.S. 731, 750 (1982) ("The President's unique status under the Constitution distinguishes him from other executive officials"), with *Harlow v. Fitzgerald*, 457 U.S. 800, 811, n. 17 (1982) ("Suits against other officials—including Presidential aides—generally do not invoke separation-of-powers considerations to the same extent as suits against the President himself"). Although we held in *United States v. Nixon*, 418 U.S. 683 (1974), that the President is not absolutely immune from judicial process, see also *United States v. Barr*, 25 F. Cas. 30 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.) (upholding subpoena directed to President Jefferson), the order upheld there merely required the President to provide information relevant to an ongoing criminal prosecution, which is what any citizen might do: it did not require him to exercise the "executive Power" in a judicially prescribed fashion. We have similarly held that Members of Congress can be subpoenaed as witnesses, see *Gravel v. United States*, 408 U.S. 606, 615 (1972), citing *United States v. Cooper*, 4 Dall. 341 (CC Pa. 1800) (Chase, J., sitting on Circuit), though there is no doubt that we cannot direct them in the performance of their constitutionally prescribed duties, see *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975) (refusing to enjoin the issuance of a congressional subpoena).

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I am aware of only one instance in which we were specifically asked to issue an injunction requiring the President to take specified executive acts: to enjoin President Andrew Johnson from enforcing the Reconstruction Acts. As the plurality notes, *ante*, at 802–803, we emphatically disclaimed the authority to do so, stating that "this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties." *Mississippi v. Johnson*, 4 Wall. 475, 501 (1867). See also C. Burdick, *The Law of the American Constitution* §60, pp. 126–127 (1922); C. Pyle & R. Pious, *The President, Congress, and the Constitution* 170 (1984) ("No court has ever issued an injunction against the president himself or held him in contempt of court"). The apparently unbroken historical tradition supports the view, which I think implicit in the separation of powers established by the Constitution, that the principals in whom the executive and legislative powers are ultimately vested—*viz.*, the President and the Congress (as opposed to their agents)—may not be ordered to perform particular executive or legislative acts at the behest of the Judiciary.²

For similar reasons, I think we cannot issue a declaratory judgment against the President. It is incompatible with his constitutional position that he be compelled personally to defend his executive actions before a court. Many of the reasons we gave in *Nixon v. Fitzgerald*, *supra*, for acknowledging an absolute Presidential immunity from civil damages for official acts apply with equal, if not greater, force to requests for declaratory or injunctive relief in official-capacity suits that challenge the President's performance of executive functions: The President's immunity from such judicial relief is

² In *Mississippi v. Johnson*, 4 Wall. 475 (1867), we left open the question whether the President might be subject to a judicial injunction requiring the performance of a purely "ministerial" duty, see *id.*, at 496–499; cf. *Kendall v. United States ex rel. Stokes*, 12 Pet. 624 (1838) (Postmaster General; *Marbury v. Madison*, 1 Cranch 137 (1803) (Secretary of State)). As discussed earlier, the President's duty here was not that.

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"a functionally mandated incident of the President's unique office, rooted in the constitutional tradition of the separation of powers and supported by our history." *Id.*, at 749; see also *id.*, at 749-757; *id.*, at 760-764 (Burger, C. J., concurring).³ Permitting declaratory or injunctive relief against the President personally would not only distract him from his constitutional responsibility to "take Care that the Laws be faithfully executed," U. S. Const., Art. II, §3, but, as more and more disgruntled plaintiffs add his name to their complaints, would produce needless head-on confrontations between district judges and the Chief Executive. (If official action suits against the President had been contemplated, surely they would have been placed within this Court's original jurisdiction.) It is noteworthy that in the last substantive section of *Nixon v. Fitzgerald* where we explain why "[a] rule of absolute immunity for the President will not leave the Nation without sufficient protection against misconduct on the part of the Chief Executive," 457 U. S., at 757, because of "[t]he existence of alternative remedies and deterrents," *id.*, at 758, injunctive or declaratory relief against the President is not mentioned.

None of these conclusions, of course, in any way suggests that Presidential action is *unreviewable*. Review of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President's directive, see, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579 (1952); *Panama Refining Co. v. Ryan*, 293 U. S. 388 (1935)—just as unlawful legislative ac-

³ Although the relief granted in *Powell v. McCormack*, 386 U. S. 465 (1968), was only declaratory, and although we reserved the question whether coercive relief could properly be granted against congressional officers, we discussed the issue of the availability of relief only after having concluded that the actions of these officers were not protected by legislative immunity, *id.*, at 517-518. Accordingly, nothing in the case suggests that declaratory relief may be awarded for actions protected by congressional (or Presidential) immunity.

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tion can be reviewed, not by suing Members of Congress for the performance of their legislative duties, see, e.g., *Powell v. McCormack*, 386 U. S. 466, 503-506 (1969); *Dombrowski v. Eastland*, 387 U. S. 82 (1967); *Kilbourn v. Thompson*, 103 U. S. 168 (1881), but by enjoining those congressional (or executive) agents who carry out Congress's directive. Unless the other branches are to be entirely subordinated to the Judiciary, we cannot direct the President to take a specified executive act or the Congress to perform particular legislative duties.

In sum, we cannot remedy appellees' asserted injury without ordering declaratory or injunctive relief against appellant President Bush, and since we have no power to do that, I believe appellees' constitutional claims should be dismissed.⁴ Since I agree with the Court's conclusion that appellees' constitutional claims do not provide an alternative ground that would support the judgment below, I concur in its judgment reversing the District Court.

⁴ A contrary conclusion is not required by the fact that in *Department of Commerce v. Montana*, 500 U. S. 442 (1992), we reached the merits of a challenge to the President's use of the method of equal proportions in calculating the reapportionment. "[W]hen questions of jurisdiction have been passed on in prior decisions *ad silentio*, this Court has never considered itself bound, when a subsequent case finally brings the jurisdictional issue before it." *Pendakurti State School and Hospital v. Heiderman*, 463 U. S. 89, 119 (1984) (quoting *Hugens v. Lavie*, 415 U. S. 629, 635, n. 5 (1974)).

PRIVATE AMERICAN CITIZENS RESIDING ABROAD

(List compiled April 1998 by the Bureau of Consular Affairs)

This list does NOT include U.S. Government (military and nonmilitary) employees and their dependents.

COUNTRY	POST	# RESIDENT AMERICANS
ALBANIA	Tirana	1,200
ALGERIA	Algiers	645
ANGOLA	Luanda	782
ARGENTINA	Buenos Aires	25,900
ARMENIA	Yerevan	201
AUSTRALIA	Canberra	2,500
	Melbourne	35,000
	Sydney	44,500
	Perth	6,800
AUSTRIA	Vienna	15,000
AZERBAIJAN	Baku	200
BAHAMAS	Nassau	7,030
BAHRAIN	Manama	1,500
BANGLADESH	Dhaka	1,100
BARBADOS	Bridgetown	5,355
BELARUS	Minsk	186
BELGIUM	Brussels	35,328
BELIZE	Belize City	2,500
BENIN	Cotonou	187
BERMUDA	Hamilton	4,300
BOLIVIA	La Paz	9,677
BOSNIA-HERZEGOVINA	Sarajevo	1500
BOTSWANA	Gaborone	692
BRAZIL	Brasilia	7,000
	Rio de Janeiro	12,300
	Sao Paulo	15,950
	Recife	2,020
BRUNEI	Bandar Seri Begawan	248
BULGARIA	Sofia	500
BURKINA FASO	Ouagadougou	329
BURMA	Rangoon	125
BURUNDI	Bujumbura	65

Exhibit F

CAMBODIA	Phnom Penh	750
CAMEROON	Yaounde	1,079
CANADA	Ottawa	24,300
	Calgary	105,000
	Halifax	36,000
	Montreal	65,000
	Quebec	3,400
	Toronto	250,000
	Vancouver	200,000
CAPE VERDE	Praia	1,000
CENTRAL AFRICAN REPUBLIC	Bangui	65
CHAD	N'Djamena	157
CHILE	Santiago	7,338
CHINA	Beijing	7,000
	Guangzhou	3,100
	Hong Kong	54,000
	Shanghai	2,382
	Shenyang	622
	Chengdu	834
COLOMBIA	Bogota	27,363
CONGO (Democratic Republic of)	Kinshasa	440
CONGO (Republic of)	Brazzaville	233
COSTA RICA	San Jose	19,800
COTE D'IVOIRE	Abidjan	2,100
CROATIA	Zagreb	1,921
CUBA	Havana	2,000
CYPRUS	Nicosia	2,268
CZECH REPUBLIC	Prague	10,000
DENMARK	Copenhagen	10,380
DJIBOUTI	Djibouti	50
DOMINICAN REPUBLIC	Santo Domingo	82,000
ECUADOR	Quito	8,008
	Guayquil	5,836
EGYPT	Cairo	5,435
EL SALVADOR	San Salvador	7,600
EQUATORIAL GUINEA	Malabo	30
ERITREA	Asmara	350
ESTONIA	Tallinn	1,000
ETHIOPIA	Addis Ababa	1,330

FIJI	Suva	5,288
FINLAND	Helsinki	4,200
FRANCE	Paris	46,080
	Marseille	16,116
	Strasbourg	1,700
GABON	Libreville	296
GAMBIA	Banjul	870
GEORGIA	Tbilisi	137
GERMANY	Bonn	11,517
	Berlin	13,198
	Frankfurt Am Main	54,008
	Hamburg	11,735
	Munich	40,000
GHANA	Accra	3,780
GREECE	Athens	80,000
	Thessaloniki	7,500
GRENADA	St. George's	2,000
GUATEMALA	Guatemala City	11,137
GUINEA	Conakry	624
GUINEA-BISSAU	Bissau	25
GUYANA	Georgetown	1,044
HAITI	Port-Au-Prince	10,887
HONDURAS	Tegucigalpa	13,000
HUNGARY	Budapest	14,500
ICELAND	Reykjavik	1,430
INDIA	New Delhi	1,625
	Mumbai	8,150
	Calcutta	1,100
	Madras	3,646
INDONESIA	Jakarta	8,174
	Surabaya	2,240
IRELAND	Dublin	38,000
ISRAEL	Tel Aviv	108,000
	Jerusalem	50,687
ITALY	Rome	40,000
	Milan	20,000
	Naples	64,000
	Florence	20,000
JAMAICA	Kingston	7,480
JAPAN	Tokyo	51,000
	Naha, Okinawa	3,378
	Osaka-Kobe	12,900
	Sapporo	1,942
	Fukuoka	5,400

JORDAN	Amman	6,300
KAZAKHSTAN	Almaty	3,600
KENYA	Nairobi	5,520
KOREA	Seoul	31,361
KUWAIT	Kuwait	6,491
KYRGYZSTAN	Bishkek	147
LAOS	Vientiane	242
LATVIA	Riga	300
LEBANON	Beirut	10,000
LESOTHO	Maseru	190
LIBERIA	Monrovia	100
LITHUANIA	Vilnius	1,500
LUXEMBOURG	Luxembourg	1,500
MACEDONIA	Skopje	830
MADAGASCAR	Antananarivo	372
MALAWI	Lilongwe	863
MALAYSIA	Kuala Lumpur	6,116
MALI	Bamako	490
MALTA	Valletta	700
MARSHALL ISLANDS	Majuro	630
MAURITANIA	Nouakchott	91
MAURITIUS	Port Louis	278
MEXICO	Mexico City	50,596
	Ciudad Juarez	22,446
	Guadalajara	50,000
	Monterrey	50,660
	Tijuana	56,375
	Hermosillo	12,000
	Matamoros	12,000
	Merida	5,950
	Nuevo Laredo	1,150
MICRONESIA	Kolonia	555
MOLDOVA	Chisinau	117
MONGOLIA	Ulaanbaatar	300
MOROCCO	Rabat	1,254
MOZAMBIQUE	Maputo	580
NAMIBIA	Windhoek	345
NEPAL	Kathmandu	1,400

NETHERLANDS	Hague	17,000
NETHERLANDS ANTILLES	Curacao	6,500
NEW ZEALAND	Auckland	13,000
NICARAGUA	Managua	5,000
NIGER	Niamey	314
NIGERIA	Lagos	10,000
NORWAY	Oslo	15,000
OMAN	Muscat	1,579
PAKISTAN	Islamabad	435
	Karachi	1,328
	Lahore	1,100
	Peshawar	233
PALAU	Koror	286
PANAMA	Panama City	14,976
PAPUA NEW GUINEA	Port Moresby	2,738
PARAGUAY	Asuncion	2,132
PERU	Lima	8,814
PHILIPPINES	Manila	105,000
POLAND	Warsaw	12,212
	Krakow	16,722
PORTUGAL	Lisbon	1,645
	Ponta Delgada	8,400
QATAR	Doha	3,200
ROMANIA	Bucharest	3,000
RUSSIA	Moscow	9,000
	St. Petersburg	535
	Vladivostok	1,495
	Yekaterinburg	180
RWANDA	Kigali	200
SAUDI ARABIA	Riyadh	14,275
	Dhahran	14,000
	Jeddah	9,620
SENEGAL	Dakar	798
SERBIA-MONTENEGRO	Belgrade	4,420
SIERRA LEONE	Freetown	400
SINGAPORE	Singapore	15,000
SLOVAK REPUBLIC	Bratislava	1,182
SLOVENIA	Ljubljana	500
SOMALIA	Mogadishu	12
SOUTH AFRICA	Pretoria	7,536

	Cape Town	2,529
	Durban	680
SPAIN	Madrid	49,974
	Barcelona	9,024
SRI LANKA	Colombo	670
SUDAN	Khartoum	1,479
SURINAME	Paramaribo	466
SWAZILAND	Mbabane	355
SWEDEN	Stockholm	18,000
SWITZERLAND	Bern	32,600
SYRIA	Damascus	3,539
TAIWAN	Taipei	36,000
TAJIKISTAN	Dushanbe	120
TANZANIA	Dar Es Salaam	1,186
THAILAND	Bangkok	16,500
	Chiang Mai	1,500
TOGO	Lome	329
TRINIDAD & TOBAGO	Port-of-Spain	2,700
TUNISIA	Tunis	700
TURKEY	Ankara	2,322
	Istanbul	4,500
	Adana	208
TURKMENISTAN	Ashgabat	74
UGANDA	Kampala	1,250
UKRAINE	Kiev	2,520
UNITED ARAB EMIRATES	Abu Dhabi	7,500
	Dubai	8,000
UNITED KINGDOM	London, England	200,000
	Belfast, Ireland	4,000
	Edinburgh, Scotland	12,000
URUGUAY	Montevideo	3,600
UZBEKISTAN	Tashkent	625
VENEZUELA	Caracas	24,593
VIETNAM	Hanoi	3,500
WESTERN SAMOA	Apia	495
YEMEN	Sanaa	15,300
ZAMBIA	Lusaka	1,575
ZIMBABWE	Harare	1,975
GRAND TOTAL		3,142,849



THE FEDERATION OF AMERICAN WOMEN'S CLUBS OVERSEAS INC.
FOUNDED 1931

May 25, 1999

The Honorable Carolyn Maloney

Ranking Minority Member
Subcommittee on the Census, House Committee on Government Reform
2430 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Maloney:

On behalf of the Federation of American Women's Clubs Overseas Inc. (FAWCO), I should like to ask for your support at the June 9 hearing of the Subcommittee on the Census, dealing with an issue of extreme importance to Americans abroad, who are feeling sorely neglected each time they hear that all efforts will be made in the Census 2000 to "count everyone". We hope your Subcommittee will give favorable attention to our position which is that "everyone" includes the currently-"invisible" overseas American.

FAWCO is an umbrella organization of 71 independent clubs in 33 countries worldwide, representing some 16,000 women and their families. It was founded in 1931 for the purpose of "working towards international goodwill and the preservation of world peace, helping one another solve problems common to (all its members) and aiding women whose citizenship rights were being ignored or restricted."

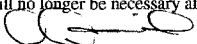
FAWCO serves not only as a support network for American women residing abroad but also as a major force in promoting better conditions for all Americans overseas. It has, for example, been instrumental in making progressive changes in U.S. citizenship law (up to the most recent, which provides for expeditious naturalization of children born to or adopted by Americans residing abroad); it worked for many years with other organizations to finally obtain the vote for overseas U.S. citizens in 1975; it continues today to organize voter registration drives in its member clubs' host countries.

FAWCO's most recent "U.S. citizens' concerns" campaign has been, in collaboration with other organizations, to advocate the inclusion of overseas Americans in the United States Census.

There are clearly many reasons for wishing to be included in the Census, not the least of which is the understandable desire to be recognized for what we are, full-fledged representatives of our country even though we may be abroad, individuals who contribute to American interests, who pay taxes, who raise their children to respect their American heritage and who offer countless hours of their professional and volunteer time to the benefit of American schools abroad, counseling for expatriates and voter registration drives, among others.

Historically, however, FAWCO has always fought for the "citizenship rights" of its members and other overseas Americans. The first of these rights is the right to vote. According to the Federal Voting Assistance Program, Americans abroad represented 4% of the total vote in 1996. We care enough to vote and we care enough to assist others in voting, and yet the great numbers of overseas Americans (which can only be roughly estimated at well over 3 million) are not taken into account in the distribution of voting districts, based on Census statistics. Following the 1990 Census, Congressional seats were redistributed; it appears clear that the same will happen after 2000, given the demographic changes in the United States. One of these changes is that increasing numbers of Americans are living and working overseas, while retaining close ties with their country, when they are not actually representing their country abroad. We feel it is unbelievably unjust to forget these Americans and run the risk of a new form of gerrymandering whereby, in some districts, votes carry less weight because real numbers of voters have been ignored.

If only for this reason, for equitable and realistic distribution of voting districts, the women of FAWCO will continue their fight to be included in the United States Census, although we sincerely hope that this fight will no longer be necessary after this year.


Lucy Laederich, President
Federation of American Women's Clubs Overseas Inc.

FAWCO Headquarters - 129bis, Avenue de Choisy, F-75013, Paris, France

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